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INTRODUCTION TO INDIANA GOVERNMENT AND POLITICS

INDIANA SESQUICENTENNIAL COMMISSION
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INTRODUCTION TO INDIANA GOVERNMENT AND POLITICS

by

PHILIP S. WILDER, JR. AND KARL O'LESSKER
Wabash College

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Indiana Sesquicentennial Commission

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The Sesquicentennial Commission has encouraged organizations to write and publish the history of their progress over 150 years, and it has also encouraged leading educators and historians to contribute articles and manuscripts which would add significantly to the Commission's endeavors to acquaint more Hoosiers with the history of Indiana. This booklet is one of a series of such booklets —telling of the structure and processes of Indiana state government.

FOREWORD

The study of state government and politics is essential to the proper performance of the responsibilities of citizenship. The rapid growth in governmental functions and services during recent decades has made such study of increased importance.

This volume is extremely helpful to students and adults alike in their study of Indiana government and politics. The authors, Philip S. Wilder, Jr. and Karl O'Lessker, are especially well prepared for its writing. Both of them have had excellent educational backgrounds, both are effective and capable teachers, and both have had considerable experience in government and politics.

The Indiana Sesquicentennial Commission is grateful to the authors for this timely and useful addition to its sesquicentennial series. It is also grateful to Wabash College for important aid and support to them in their writing of this volume.

Previous booklets in this series include:

Donald F. Carmony, *Handbook on Indiana History*

Hubert H. Hawkins, *Indiana's Road to Statehood*

Dave O. Thompson, Sr. and William L. Madigan, *One Hundred and Fifty Years of Indiana Agriculture*

James M. Guthrie, *A Selection of Newspaper Articles Entitled Sesquicentennial Scrapbook*

If booklets such as these continue to be published and thoughtfully used by students and adults, Indiana government and politics will be better understood and conducted than otherwise.

Donald F. Carmony, Chairman
Indiana Sesquicentennial Commission

PREFACE

We have written this study in the hope that it will increase our readers' understanding of the way Indiana state government is organized and how it functions.

In this Sesquicentennial of Indiana's statehood, there is special interest in all features of the state, including its government—and we applaud this. We recognize, however, that in normal conditions, state government is of primary concern to only a relatively few Americans. State affairs are less dramatic than those of the national government and less close to home than those of local government; as a result they tend to receive less attention than they deserve.

The fact is that the government of Indiana, like that of the other states of the Union, is of very substantial importance to its citizens. State government does a number of vital jobs on its own; it also sets standards and provides assistance for the conduct of affairs by local governments within its borders and performs an important role as an instrument for carrying out programs initiated by the Federal government. No state will achieve its full potential as a satisfying home for its citizens unless its government functions effectively.

In the course of this booklet, we attempt to make clear the nature of the tasks Indiana's government is called upon to perform, the structure of the institutions through which its work is done, and the processes through which its policies are formulated and its programs are put into effect.

We have attempted to fashion a tool for understanding. We have included as many facts as seemed to us to be helpful in conveying a picture of the way Indiana government and politics functions, but have deliberately refrained from including facts for their own sake. Organizational specifics and other data about the state's government are already available in other publications and we have not attempted to produce a source book for researchers.*

A number of people have given us aid and encouragement in this project. Dr. Donald F. Carmony, of Indiana University and

* The most readily available of these compilations of data is *Here Is Your Indiana Government,* published biennially by the Indiana State Chamber of Commerce.

the Indiana Sesquicentennial Commission, has been a most patient and cooperative editor. Among the present and former state officials who gave us all we asked for in the way of expert information are Mr. Samuel Lesh, Director of the Legislative Bureau; Mr. David J. Allen, Assistant to the Governor; Chief Deputy Attorney General, J. Patrick Endsley; Treasurer of State, Jack L. New; former Lieutenant Governor, Richard O. Ristine; and former Governor Matthew E. Welsh. Dr. George Lipsky, our colleague in the Wabash College Political Science Department, read the manuscript and gave us the benefit of suggestions concerning both style and content.

The Public Affairs Research Committee of Wabash College, Dr. Warren W. Shearer, Chairman, generously provided us with financial aid during the summer of 1965 in order to free us from having to devote time to other sorts of remunerative labor. And our Wabash College secretary, Mrs. John Walters, has been an admirably efficient and uncomplaining typist. Although both authors made some contributions to each chapter, it should be recorded that Dr. O'Lessker prepared the first draft of Chapters 1, 3, 4, and 5 and Dr. Wilder of Chapters 2 and 6.

In writing this volume the authors have benefited from their acquaintance with Pressly S. Sikes' *Indiana State and Local Government* which was last revised in 1950. The fact that this volume is no longer generally available and the need to consider important developments in government since 1950 make desirable a new account of Indiana government.

Other fortunate husbands will understand how much we owe our wives, Barbara F. Wilder and Vera M. O'Lessker, for their patience, counsel, and occasional salutary needling.

Philip S. Wilder, Jr.
Karl O'Lessker
Crawfordsville, Indiana
December, 1966

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Chapter One

THE CONSTITUTIONAL FRAMEWORK

The bare facts are these:

Indiana's present Constitution is its second—the first having been adopted just prior to statehood in 1816 and the second adopted November 1, 1851, following a constitutional convention held in Indianapolis from October, 1850 to February, 1851, and ratification by the people on the intervening August 4th by a vote of 113,230 to 27,638. It is the seventh oldest among the 50 states and the fourth shortest.

These "bare facts" conceal—or at least fail utterly to illuminate—an historical richness equal to that of any other state, for written constitutions are held precious by Americans and the old are not lightly cast aside for new. So it is that in the years between 1816 and 1850 in Indiana, it took an enormous accumulation of grievances against the old constitutional system to bring a new one into being.

The story of those grievances is beyond the scope of this study; our task is to analyze the Constitution of 1851, as amended, to discover (a) why we have it at all, and (b) what its main features are.

A. Why We Have a Constitution

At the time our United States Constitutions came into being (1781 and 1787), written constitutions were a rarity in the world. To be sure, all the 13 Colonies had had constitutional charters of one form or another, but no *nations* had any. Many nations, however, had recognized modes of governing according to which the total powers of government were to some extent limited and distributed among different parts of the total system. In England, for example, it had come to be understood that free citizens enjoyed certain privileges and immunities (trial by jury, to name only one) which government could not deprive them of except in times of grave national emergency. And the power to levy taxes upon the people lay exclusively in the hands of Parliament and not the King.

Now these are functions—limitations upon government, distribution of powers—which are basic to written constitutions as we

know them, but we should not suppose that a constitution *has* to be written in order to be a constitution. Indeed, the British people even today do not have a written constitution. But any competent student of British government could nevertheless tell you whether a particular proposal is "constitutional" or not.

From almost the beginning of our own national history, however, we have put great stock in written constitutions—at the city and state as well as national level. And this has come to be the practice for most of the rest of the world as well. We shall not have to go any further into the question of written vs unwritten constitutions in this book; suffice it to say that the latter *can* be as effective an instrument of government as the former and experience in many parts of the world demonstrates that written constitutions are often not worth the paper they are inscribed on.

Written or not, a constitution has to perform the two functions already cited. For if there were no limits set upon the total power of government, then no one would be safe either in his person or his property from the kind of brutal tyranny we associate with *totalitarian* governments such as Nazi Germany and Soviet Russia at its worst. And if the powers of government were not distributed in some clearly understood fashion among the different branches, then nothing less than chaos would ensue as first one, then another, then yet another official or group of officials would seek to issue binding orders on the very same subject.

A third general function of constitutions is related to the latter. Before powers can be distributed, there have to be certain major institutions of government to which we can distribute them; these are, typically, a legislative, an executive and a judicial branch. We should note here, however, that the three main branches need not be separate and distinct as the Founding Fathers supposed them to be. In the form of government we call "parliamentary"—a category which includes most of the world's genuine democracies—the executive branch is headed (usually) by members of the legislature and has to answer to the legislature for its actions. But the American system, both state and national, separates the branches more decisively—in theory if not always in practice.

A constitution, then, will always establish the over-all structure of government by specifying its component parts and designating, in

some detail, how their members are to be chosen and for how long they may serve.

To these three principal functions of a constitution, some writers would add a fourth and others a fifth. A constitution, it is sometimes said, must always state how the constitution itself is to be amended. Unless it does so, the constitution will either be totally unchangeable and therefore destined to "die" from inflexibility as conditions change, or else necessary alterations (and some not so necessary) will occur in an utterly haphazard and unpredictable way, leading eventually to widespread instability.

A final function sometimes attributed to constitutions is what one writer describes as the setting forth of social and political norms which are to be taken as standards in terms of which questions of what is "right and proper" may be considered. Examples of this are to be found in Preambles and in certain sections of the Bills of Rights which all written constitutions, here and abroad, contain. We may question whether these latter two functions are of the same order of importance as the first three. But we shall want to include at least the amending power as we turn now to an analysis of the present Indiana Constitution to see how, and how well, it performs the tasks which its authors and we have assigned it.

B. Main Features of the Indiana Constitution

1. Limiting the powers of government

The most obvious place to look in a constitution for limitations upon the powers of government is the "Bill of Rights"—a more or less extensive catalogue of actions that government may *not* take against the citizen. So it is that Article 1 of the Indiana Constitution is plainly labelled "Bill of Rights" (not so in the U.S. Constitution) and consists of 37 sections, most of which lay down guarantees for the individual or prohibitions against the government. No fewer than seven sections (#2 through #8) deal with freedom of religion and conscience, and prohibit the state from sponsoring, supporting, or in any way favoring one religion over another. Sections 9 and 10 guarantee freedom of expression but warn against the abuse of that freedom (as in cases of libel or slander). The remainder of this very extensive Bill of Rights provides a wide variety of requirements and prohibitions, many dealing with the rights of accused persons—which taken together are designed to insure that the residents of

Indiana receive the benefits of what the Constitution's framers regarded as included in the concept "due process of law."

Although Indiana's Bill of Rights is designed to do for the state very much the same thing the first ten amendments to the Federal Constitution do for the national government, the fact is that Indiana's list of protections is significantly broader than the Federal list. The state list includes almost every specific provision of the Federal. The only substantial exceptions involve the state's freedom to use an alternative such as a Prosecutor's Affidavit in place of the Grand Jury indictment which is required in Federal courts and the fact that the State Constitution does not require the state to make lawyers available at public expense to all accused persons. This last difference is no longer important since the Federal Supreme Court has held that federally-guaranteed "equal protection of the laws" is violated whenever a person is convicted in a state court without having had a lawyer. It is also true that most of the points at which the state constitutional provisions seem to go beyond the Federal are without major significance. The requirement that the state's penal code, for instance, "shall be founded on the principles of reformation and not of vindictive justice" has not produced any traceable differences between state and federal statutes.

Limitations imposed upon the powers of government by the Constitution go well beyond the simple enumeration of individual rights. The General Assembly, for instance, is prohibited from passing *local* or *special* laws doing a whole series of things, such as regulating the business of individual counties or townships, specifying particular highways to be built, or granting special divorces. In fact, the General Assembly does regulate county and township business, cause highways to be built, and make divorce laws for the state, but these things must be done in general, not individual, terms. This means that, while the legislature *cannot* tell Montgomery County officials how to handle their particular business as such, it can and does tell officials of *all* counties how to handle business common to all and may also pass laws affecting all counties within a given population range even if that classification includes only a few, or even one, county.

Other limitations include the controversial prohibition against a state debt, a ceiling on local indebtedness of two percent of that locality's assessed valuation, and miscellaneous minor prohibitions

reflecting the moral temper of the age in which the Constitution was written. ("No lottery shall be authorized; nor shall the sale of lottery tickets be allowed.")

We can sum up this part of the discussion by noting that the constitutional function of placing limitations upon the total power of government is mainly carried out in Indiana's Constitution in the Bill of Rights. But it is important to understand that constitutional limitations, in the Bill of Rights or elsewhere, are rarely as restrictive as they appear to be on paper; to take only one example out of dozens, consider Section 18 of Article I, which was referred to above: "The penal code shall be founded on the principles of reformation, and not of vindictive justice." Clearly, if this means anything at all it means that the death penalty is unconstitutional in Indiana, for no one is "reformed" by being sent to the electric chair, and the death penalty has been recognized throughout the centuries as the highest form of "vindictive justice." And yet two separate Indiana Supreme Court cases have held that the death penalty is *not* unconstitutional! The plain but powerful moral to be drawn from this illustration is that when government wants to do something that has the at least tacit consent of a majority of the people, words in a Constitution can never serve as a practical limitation. We shall see this same moral drawn from other illustrations at several other points in this chapter.

2. Establishing the structure of government

Articles IV, V, VI and VII deal explicitly with the general architecture of state governmental institutions, following a single-sentence Article III which lays down the principle of *separation of powers* among the legislative, executive, and judicial branches.

Article IV deals with "The Legislative authority of the states [which] shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." It goes on to authorize a *maximum* membership for the Senate of 50 and for the House of 100, but does not prohibit smaller memberships for either body. Senators are to be elected for four year terms, Representatives for two—with half the Senate to be elected at each biennial general election.

Sections 4, 5, and 6 of this Article have been among the most controversial in Indiana history during most of the past 30 years;

they deal with districting and apportionment of the General Assembly. Essentially, the problem has been this. The present Constitution, like the one which preceded it (1816), calls for apportionment of both houses on the basis of population—that is, the number of Senators and Representatives to which each county is entitled is determined by "the number of male inhabitants, above twenty-one years of age, in each . . . ," which in turn is to be determined by an enumeration made every six years.

So adult male population is to be the basis of representation and representation is to be changed, as the need arises, every six years. The name of the procedure is "reapportionment."

With only a few minor exceptions, reapportionment did take place every six years up to and including 1921. But none in 1927 or 1929 or in any other General Assembly until the special session of 1963 enacted a bitterly disputed reapportionment measure which was vetoed by the Governor and then declared valid by the state Supreme Court.

After noting that all the General Assemblies from 1927 to 1963 flatly ignored the clear mandate of our own state Constitution, we must attempt to discover why this happened and what finally produced a settlement.

One obvious reason for the long delay was the population shift in Indiana from rural to urban areas, which began to assume major proportions after 1918. The impact of World War I, the long farm depression from about 1920 to 1940 and the growing industrialization of the state all contributed to an increasingly rapid movement from the farms to the cities—and with it a sharp drop for the rural areas in the population base on which representation in the legislature is founded. By as early as 1927, a number of counties that formerly had had their own Representative in the House and shared a Senator with only one other county, found that their total representation in the General Assembly would have to be sharply cut back. And, needless to say, the longer reapportionment was delayed, the larger the number of rural and semi-rural counties that found themselves in this position.

From the viewpoint of the legislators themselves, more and more of them found that a vote for reapportionment would amount to a vote to remove themselves from office. This, added to the genuine concern most of them felt for the decreasing lack of political influence

that rural Hoosiers would have, made reapportionment an unattractive prospect. And none of this unhappiness was relieved by the inescapable recognition of what to many was the worst fact of all . . . that almost all the representation lost by rural folk would be gained by the growing masses of city people in the metropolitan counties of Marion, Lake, St. Joseph, and Allen.

Reapportionment, in sum total, became a moral, psychological, and political horror for a majority of the very people who had sole responsibility for accomplishing it—the members of the General Assembly. Little wonder that the thrust that led to reapportionment came neither from the General Assembly itself nor from the people, but rather from certain U.S. Supreme Court decisions that made it clear that if Indiana's own legislators refused to do the job, a Federal District Court would do it for them.

The 1963 reapportionment act, which its own drafters recognized to be not entirely constitutional, was replaced by a new act in 1965. At the same time the General Assembly gave first approval to a constitutional amendment which, if ultimately adopted, will make the whole procedure a good deal easier and less subject to being ignored by future legislatures. This amendment would (a) change the reapportionment schedule from every six to every ten years; (b) establish the population base as males *and* females 21 years of age and over; and (c) make use of the Federal census figures rather than having Indiana county officials conduct their own difficult, time-consuming, and expensive enumerations.

We have dwelled at some length on the problem of reapportionment because it illustrates so neatly a number of the continuing problems, not only of the Constitution but of other aspects of state government and politics as well, with which we shall be dealing throughout the book. Let us continue now with our examination of the structure of government as laid down in the Constitution.

Article IV, on the legislative branch, goes on to require that counties in a Senatorial or Representative district must be contiguous (share a common boundary) and then adds that "no county, for Senatorial apportionment, shall ever be divided." This is a rather curious provision because—first, it applies only to Senatorial and not to Representative districts, and secondly, there is not the slightest hint in the records of the Constitutional Convention of 1850-1851 as to the reason for it, and at this point in time, it is hard even to guess

what the drafters' reasons might have been. Suffice it to say, however, counties never have been divided into either Senatorial *or* Representative districts, though the latter would be Constitutionally permissible.

Qualifications for membership in the two houses are then laid down—these being U. S. citizenship, two years' residence in the state, and one years' residence in the county or district prior to election, 25 years or older for Senators and 21 years or older for Representatives.

Other provisions in this long Article concern such matters as privileges and immunities of members, certain basic rules of procedure, prohibitions against the passage of various types of special legislation, and the form and status of acts (including the stern but hopeless demand that "Every act and joint resolution shall be plainly worded, avoiding as far as practicable, the use of technical terms."). The important and controversial next-to-last section limits regular sessions of the General Assembly to 61 days and special sessions to 40 days, with the former, as we know, to be held only every other year, and the latter to be held only when, "in the opinion of the Governor, the public welfare shall require it. . . ."

Article V is entitled "Executive" and deals with the offices of Governor and Lieutenant Governor, their powers, duties, and method of election.

Doubtless the most controversial section is the very first, which prohibits a Governor from succeeding himself—that is, from being re-elected to successive terms (the Lieutenant Governor is not similarly prohibited). To be sure, a Governor may be elected to another term after he has been out of office for at least four years; but only one man in Indiana history has managed to do this—Henry F. Schricker, elected in 1940 and again in 1948.

The Governor and Lieutenant Governor are to be elected by popular vote, "at the times and places of choosing members of the General Assembly." Both must be citizens of the United States and residents of Indiana for at least five years prior to their election, and both must be not less than 30 years of age. Persons holding state or Federal office are not permitted to serve as, but may be candidates for, Governor and Lieutenant Governor.

In case of a Governor's death, resignation, or disability, he is succeeded by the Lieutenant Governor. If both offices are vacant, the General Assembly shall decide by law who is to serve (present

law puts the President Pro Tempore of the Senate next in line of succession to the Governorship. No provisions exist to fill the vacant office of Lieutenant Governor except in his capacity as presiding officer of the Senate.).

Article VI, entitled "Administrative," establishes the offices of Secretary of State, Auditor, and Treasurer—all elected for two-year terms, none to serve more than four years out of any six-year period—and a whole host of county offices, their terms, powers, and duties.

Last in the series of Articles laying down the general structure of state government is Article VII, on the Judiciary. It calls for "a Supreme Court, Circuit Courts and such other courts as the General Assembly may establish." Supreme Court judges are to number not less than three nor more than five, to be elected from judicial districts but voted on by all the voters in the state, and to hold office for terms of six years (with no limit on right of re-election). Provision is also made for election of Circuit Court judges, clerks, prosecuting attorneys, and a Clerk of the Supreme Court; the first are elected for six-year terms, the latter three for four-year terms—all with no limitation on right of re-election.

Since most of the powers and duties of judicial officers are defined by statutes rather than by the Constitution, we shall reserve further discussion of these for our chapter on the state judiciary.

One other statewide elective office is established by the Constitution—that of State Superintendent of Public Instruction, "who shall hold his office for two years, and whose duties and compensation shall be prescribed by law." (Art. 8, Sec. 8)

The lack of detail in the Constitution itself about this last-named officer lends important emphasis to a final point which needs to be made about the structure of state government—only a very small portion of that structure is even mentioned in the Constitution; much the greater part has been created by act of the legislature. This was, of course, the intent of the men who wrote our State Constitution, following the wise example of the U. S. Constitution—an even briefer and less detailed charter than Indiana's. By contrast, some state constitutions run to hundreds of pages—Louisiana's, for example, is about *thirty times* the size of ours—and contains the minutest provisions regarding both structure and functions. But the drafters of Indiana's Constitution, to their great credit, recognized that it would be sufficient simply to lay down the broad framework of

state government, and then rely on the good sense of the people and their elected representatives to fill in the detail as time and need might require.

3. Distributing the powers of government

It is no accident or coincidence that all 50 states as well as the national government have three branches. Indeed *every* government has the three functions to perform of making authoritative rules for society (legislative), seeing that the rules are carried out (executive-administrative), and deciding disputes among members of society, or between society and the individual, as to which rule applies in any given case (judicial).

Now although every government has these functions to perform and therefore has to have the power to do so, it is not necessary that power be parcelled out among different branches, or even different persons. The modern dictator, like the absolute monarch of old, can combine all three kinds of power in his own person. But the *functions* remain distinct even when the same person performs them all.

From the beginning of our own national life, however, we decided that the surest way to prevent abuse of governmental power was to divide it up among different officers in different branches of government—these branches being structured according to the functions we wanted them to perform. This was the system adopted in our second national charter, the Constitution of 1787, and all states followed suit.

Hence, legislative power in Indiana is vested, as we have seen, in a General Assembly, but with both the Governor and the Lieutenant Governor having substantial parts to play in the law-making process. In the case of the Governor, the Constitution grants him the right to reject legislation which he believes to be undesirable (the *veto* power), the right to recommend legislation as he sees fit (the *message* power), and the right to call special sessions of the General Assembly whenever he deems it to be in the public interest to do so. (The Governor's most potent influence in legislative matters derives not, however, from the Constitution but from his role as "commander-in-chief" of one of the two major parties in the General Assembly. (The significance of this fact will become clear when we

take a closer look at the Governor and his administration in Chapter 4.)

As for the Lieutenant Governor, the Constitution designates him presiding officer of the State Senate and gives him the right to vote in case of a tie; he may also take part in debate and vote when the Senate resolves itself into a *committee of the whole.* (The importance of these duties, too, will become clear when we discuss the General Assembly in Chapter 3.)

A third additional wielder of legislative power in Indiana is the Judiciary. Although the Constitution does not explicitly provide for it, by 1851, courts in America had long since come to have the power of *judicial review*—that is, the power to decide whether an act of the legislature is or is not constitutional. And, quite apart from judicial review, courts have always had the power to *interpret* an existing law—declaring what *they* think the law means and was intended to accomplish—and in doing so have sometimes created what is, for all practical purposes, a new law. Now these may be perfectly proper tasks for the courts to perform, but we should not overlook the fact that the power to strike down or give new effect to a piece of legislation is, strictly speaking, a legislative power.

To sum up, then, the total legislative power of the state of Indiana is *formally* vested in the General Assembly but *effectively* distributed among all three branches of government—the General Assembly being clearly preponderant.

By the same token, executive power—seeing that the rules are carried out—rests primarily but not exclusively in the hands of those whom the Constitution cites as the executive and administrative officers of the state: the Governor; Lieutenant Governor; Treasurer; Auditor; Secretary of State; and Superintendent of Public Instruction. The Governor is incomparably the most powerful of these, but a substantial part of his supremacy derives from grants of authority to him from the General Assembly. The Constitution itself goes into considerable detail about his legislative and judicial powers (Art. 5, Secs. 14 and 17, for instance), but has only a few short sentences concerning those other powers which are generally regarded as executive. The following are all from Art. 5:

Sec. 1. The executive power of the State shall be vested in a Governor.

Sec. 12. The Governor shall be commander-in-chief of the military and naval forces, and may call out such forces, to execute the laws, or to suppress insurrection, or to repel invasion.

Sec. 15. The Governor . . . may require information in writing from the officers of the administrative department, upon any subject relating to the duties of their respective offices.

Sec. 16. He shall take care that the laws be faithfully executed.

Sections 18 and 19 give him the right to fill certain vacancies in office or to issue "writs of election" in the cases of vacancies in the General Assembly. And that is all the Constitution has to say about the Governor's executive powers.

Yet Indiana's Governor is not only supreme within the executive-administrative branch, he ranks as one of the strongest governors of any state in the Union . . . . and this despite the rather unimpressive Constitutional grants of authority and the severe handicap of not being able to succeed himself for a second consecutive term. Must this apparent paradox be explained, then, in wholly non-Constitutional terms? Does the Governor's power derive, as we have suggested, from legislative grants and from his position as leader of a major political party?

These are certainly important parts of the explanation, as we shall see in considerable detail in Chapter 4. But the deeper answer, in fact, lies with the Constitution—more for what it does *not* say than for what it *does*. Two events a generation apart, will illustrate the point.

Shortly after leaving office in 1965, former Governor Matthew E. Welsh attended a conference of ex-governors held in North Carolina for the purpose of reviewing current problems of state government. Governor Welsh addressed the conference on the powers and duties of Indiana's chief executive and, to his surprise, created something of a sensation. One after another of the ex-governors told him with awe and envy of how limited their powers had been as compared to his. "Why, do you know," said one, "I got to appoint only six people in the whole state of _____!" Contrast this to the approximately 10,000 Hoosier state employees in every administration who owe their positions, directly or indirectly, to the

Governor, appointed by him without reference to the legislature and removable by him at his own pleasure.

The earlier event—one of immense significance in Indiana political history—occurred in 1941, during the first months of former Governor Henry F. Schricker's first administration. Though Schricker, a Democrat, had been elected the preceding November by a comfortable margin, both houses of the General Assembly had Republican majorities. Up to that time, the power to appoint practically all state governmental employees had been vested by law in the Governor. Now, however, the General Assembly decided that, since nothing in the Constitution *required* the Governor to have that power, they would strip him of a substantial portion of his appointive rights and place them instead in the hands of elected Republicans. This they did, over the Governor's veto, in a series of "ripper" bills. But the General Assembly's triumph was short-lived.

Governor Schricker appealed to the courts. The General Assembly's action, he contended, was an infringement of his rights as chief executive and was therefore unconstitutional. In an historic decision, the state Supreme Court agreed: *unless otherwise specified by the Constitution,* said the Court's majority, the Governor must be presumed to have exclusive appointive and removal powers over all state administrative personnel. For how else could he "take care that the laws be faithfully executed" if those responsible for their day-to-day execution (i.e., the administrators) were answerable to anybody but the Governor for their actions?

This, then, is why we have stated that what the Constitution does not say is at least as important for the Governor's powers as what it does say. Specifically, it does not place the bulk of our government's administrative functions in other hands; therefore, in line with the accepted theory of executive power, those functions and the powers necessary to carry them out, must lie with the Governor. By contrast, the Constitutions of many other states *do* specifically vest considerable executive-administrative power in officials other than the Governor, leaving the latter in the unenviable position of Governor Welsh's acquaintance who complained about having only six positions to fill in his entire state.

We must go on to note, however, that while the legislature and judiciary of Indiana do not actively participate in the execution

of the laws, both play a major role in setting the conditions within which execution and administration must be carried out. With the exception of only those few offices directly established by the Constitution, every other agency of state government has been created by act of the General Assembly and the powers and duties of each are defined by law. And indeed, even the Constitutional offices of Treasurer, Auditor, Secretary of State, and Superintendent of Public Instruction have had to look to the General Assembly for a definition of their powers and duties.

The courts, too, enter into the executive-administrative process through their power to decide whether or not particular administrative acts and rulings are in conformance with the laws which were supposed to have empowered those acts and rulings. If, for example, the Department of Revenue were to issue a regulation imposing a sales tax on the purchase of certain kinds of farm equipment used in the production of food, a citizen affected by that regulation could appeal to the courts and have it struck down on the grounds that it violates a specific clause in the Revenue Act of 1963. This sort of review of administrative activity is everywhere regarded as a proper function of the courts, and as we have said, while the court's decision is not itself an administrative act, it certainly involves the court in the total administrative process.

Judicial power—the application of the law to specific cases—is constitutionally "vested in a Supreme Court, Circuit Courts and such other courts as the General Assembly may establish." (Art. 7, Sec. 1.) To a far greater extent than the other two branches, the judiciary exercises its particular power by itself. Neither the legislature nor the executive gets into the actual business of deciding legal disputes and applications. But it is nevertheless true that both the other branches, but especially the legislature, play a significant part in establishing and maintaining the framework within which the courts operate. This is so because the Constitution explicitly grants to the General Assembly the right to determine what the courts' jurisdiction shall be—that is, what kinds of disputes the courts are legally entitled to deal with. (Art. 7, Sec. 4.) For example, it is conceivable, though very unlikely, that some future General Assembly might pass a law denying the Supreme Court the power to hear cases involving hiring and firing practices in state government, or it could deny to any lower court the power to hear cases involving questions of constitutionality

of state laws, or it could drastically enlarge or restrict the original jurisdiction which the Supreme Court has accumulated over the years by previous legislative actions. In short, although the courts suffer little or no outside interference in the day-to-day exercise of the judicial power, that power itself is almost entirely what the *legislature* says it is.

One other point to be made in connection with judicial power in Indiana is that Hoosier courts, like those of every other state, share at least part of their power with the Federal courts. That is to say, no state court can ever be perfectly sure that it has had the "final say" in a particular case, civil or criminal, because the losing party can always appeal the verdict to a Federal court on the grounds that some national law is involved. And the power to decide whether there is indeed a "Federal question" involved lies strictly with the Federal courts; no state court has any conceivable way to block an appeal from its own decision.

This completes our survey of the manner in which the Indiana Constitution performs the third of its great functions, distributing the powers of government. We turn now to the fourth function, which is establishing a method by which the Constitution itself can legally be changed.

The amendment procedure in Indiana is deceptively simple. A short Article 16, consisting of two sections, sets forth the basic procedure as follows: (1) an amendment may be proposed in either house of the General Assembly; (2) if agreed to on a roll-call vote by absolute majorities in both houses, it is referred to the next elected General Assembly; (3) if then passed again by absolute majorities of both houses, it must be submitted to the voters of Indiana at a forthcoming general or special election; (4) if, finally, it is approved by a majority of the voters, it thereupon becomes a fully legitimate part of the Constitution.

Section 2 of Article 16 adds two restrictions of some importance which we shall discuss in a moment, but these are not the factors which lead us to call the procedure *deceptively* simple. The first difficulty arises at step (3)—suppose the "next elected General Assembly" agrees to all but a few words of the proposed amendment. Must it pass the measure strictly as is or can it make what changes it likes and then submit it directly to the voters? This question was very much at issue during Indiana's Sesquicentennial year because

the 94th General Assembly (1965) "agreed to" a proposed amendment first passed by the 93rd General Assembly but only after eliminating one section of the 1963 text. The proposed amendment in its revised form was submitted to the voters at the 1966 general election in the face of sharp divisions among students of constitutional law as to whether the legislature acted properly in claiming to have "agreed to" a proposal different from that which had been submitted to it by its predecessor. The amendment was ratified by the voters at the last general election and there is every likelihood that the underlying constitutional question will finally have to be resolved by the Indiana Supreme Court.

A second point of difficulty, but one that already *has* been resolved by the Supreme Court, has to do with the problem of what is meant by the phrase "a majority of the voters" (the Constitution uses the word "electors" but it makes no difference in this context). Until 1935 the Supreme Court had held that the phrase meant a majority of all persons who voted in that election, *whether or not they actually voted on the proposed Constitutional amendment itself.* Consequently, since many voters fail to mark their ballot either for or against proposed amendments, seven such proposals received more favorable than unfavorable votes but were said to have failed because of not receiving a majority of *all* voters at that election.

In 1935, however, the Indiana Supreme Court reversed earlier decisions on this point and declared that, effective in 1932, a proposed amendment needed to receive only a majority of those who actually voted on the amendment itself. This is how the procedure stands now, and so it is evidently a good bit easier to amend the Constitution presently than it was prior to 1935. But in any case, no great flood of amendments has resulted because other formidable obstacles remain along the path. The picture will become clearer when we examine the following breakdown:

PROPOSED AMENDMENTS TO INDIANA CONSTITUTION
1851-1963

Adopted by both houses, first session	121
Adopted by both houses, second session and submitted to voters	40
Ratified by voters prior to 1932	9
Received fewer favorable than unfavorable votes prior to 1932	13

Received more favorable than unfavorable votes but not ratified because of lack of absolute majority prior to 1932	7
Ratified by voters since 1932	11
Rejected by voters since 1932	0

There are several significant points to be noted concerning these figures. First, we have not included the total of all amendments ever proposed (approximately 525) because more than three-fourths of them lacked enough support to be adopted by even one General Assembly. Much more significant is the "mortality rate" among those that did receive favorable action by one session of the legislature but failed to win support at the following session—66.9%. This, in fact, is the most critical stage in the life of a proposed amendment, for after it has passed two successive sessions of the General Assembly, the odds in its favor jump dramatically. This point is obscured by the pre-1932 requirement that a proposed amendment receive a majority of all voters at an election. During that period only 9 were ratified while 20 were rejected; but of the 20 that were rejected, 7 received more favorable than unfavorable votes. This means that if the present Supreme Court ruling had been in effect during the whole period since 1851, 27 out of the 40 proposed amendments—67.5%—would have been ratified. Put in simplest terms (and still assuming the present requirement to have been in effect from the beginning), after a proposed amendment has been adopted by one session of the General Assembly the odds *against* its final ratification are still better than three-to-one. But after it has passed two sessions of the General Assembly, the odds *in favor* of its ratification are better than two-to-one.

Another point worth particular attention is the 100% success of all proposed amendments that have been submitted to the voters since 1932. This fact cannot be explained simply by the less rigorous nature of the present amending procedure, because prior to 1932, as we have seen, 13 of the 20 proposals were actually voted down by the electorate. But it is equally noteworthy that 12 of the 13 "fatalities" all occurred at a single special election—on September 6, 1921—at which time the electorate was faced with 13 proposed amendments and accepted only one! One other curiosity which the bare figures do not reveal is that seven of the nine amendments adopted prior to 1932 were all ratified at the special election of March

14, 1881, and the other two also needed special elections for their ratification.

The Supreme Court's 1935 ruling, as we have seen, obviously makes it easier to amend the state Constitution than previously had been the case—but major roadblocks remain. The requirement that a proposal be adopted by two successive General Assemblies (not just two sessions of the same General Assembly) is the most difficult of these to overcome. The other major obstacle was a clause in Section 2 of Article 16 stating that no new amendment could be proposed while any other was pending from the previous session or was awaiting action by the voters. This meant, by way of illustration, that since several proposed amendments had been approved by the 1963 General Assembly, the Assembly of 1965 was prohibited from offering any others unless (as would have been possible) it had first voted down all of its predecessor's proposals.

One of the two proposed amendment which the electorate ratified in the 1966 general election did away with that restriction, thereby leaving it open to any Assembly to offer amendments whenever a majority of both houses wishes to do so.

We should not conclude this discussion of the amending procedure and of the Constitution itself without looking briefly at the recurring suggestion that Indiana in fact needs a whole new Constitution and that changes brought about through the ordinary amending process are inadequate to the real needs of the state.

That this view is held by others than simply academic observers of the Hoosier governmental scene is shown by the fact that one or more members of every General Assembly since World War II has introduced resolutions calling for a constitutional convention, the job of which would be to do what was done in 1850—scrap the existing Constitution and draw up a brand new one. Among the arguments presented by proponents of this view are the following: our 115-year-old Constitution is presently one of the oldest in the nation and therefore must surely require extensive revision; any really major changes, no matter how desirable, would probably be regarded by the General Assembly as politically "too hot to handle," hence could never get fair consideration; even the relatively minor changes that should be made are so numerous that it would surely take decades to get all of them adopted through the regular amending process,

whereas a constitutional convention could accomplish them all in a matter of a year or two.

Those who oppose the calling of a constitutional convention argue, by contrast, that age alone is no condemnation of a Constitution—if it were, we should have scrapped our U. S. Constitution (1787) long ago; wholesale changes in a constitutional system are inherently undesirable for they cause too much disruption in the accustomed political way of life of a state; "selfish interests" would find it much easier to gain their ends in the short span of a constitutional convention than in the two-session, one-referendum procedure required for regular amendments; the current amendment procedure (with the modifications adopted this year) is sufficiently flexible to permit whatever kind and amount of change the people of Indiana might conceivably want.

Curiously enough, no one is altogether sure how a constitutional convention could properly be called, since the Constitution itself is silent on the subject. The prevailing view among interested legislators and academicians appears to be this: (1) the General Assembly would adopt a joint resolution calling for a referendum on the question of whether to hold a constitutional convention; (2) if approved by the voters, the next General Assembly would have to devise machinery for the election of delegates to such a convention; (3) election of delegates; (4) drafting of a new Constitution; and (5) submission of the new document to a referendum of the people which, if approved by majority vote, would put the new Constitution into force at a time established by the convention and written into the Constitution.

This is clearly a long and complicated process with abundant opportunity for opponents of the plan to "scuttle" it along the way. We might therefore reasonably assume that dissatisfaction with the present Constitution would have to mount to far greater intensity among the general public and important interest groups than now seems to exist. Unless and until that happens, the Constitution of 1851, as amended, will continue to serve as Indiana's basic law.

Chapter Two

CHANNELS OF POLITICAL ACTION: INTEREST GROUPS, POLITICAL PARTIES, AND ELECTIONS

Familiarity with the interest groups and political parties of Indiana is at least as essential to an understanding of the state's political and governmental system as is familiarity with specific features of the formal machinery of state government.

If the people of Indiana lived as nothing more than independent isolated individuals, or even families, it would be effectively impossible for them to provide any guidance to the government of the state. Indiana's citizens are not isolated individuals, however, and the fact that they have banded together to form a number of groups and associations provides, as a by-product, the channel through which "public opinion" can be translated into instructions, requests, and suggestions to the government.

Within our population, there are countless groups of people who have something significant in common with each other. Many of the potential groups do not organize and never do anything collectively. There has been no effective organization of tall people to work against doorways which make them stoop, there is no association of brunettes to protest the suggestion that "blondes have more fun," and left-handed students have not organized to protest the discriminations imposed on them by a right-handed world. Despite the many potential groups which are not organized, there are within Indiana many thousands of organized associations. Bowlers, flower lovers, and barbershop quartet singers, barbers, swine breeders, and carnival operators, township trustees, managers of insurance companies, and unhappy residents of areas selected for government use as wildlife refuges—all of these groups of people may organize.

Most voluntary associations of citizens have little or no direct concern with governmental activities at any level. When leaders of one of these associations decide there is a possibility that governmental action might either advance or hinder the cause which led the association members to come together, the association will, however, be in a position to defend the interests of its members. When

this interest group does seek to shape public policy, it becomes a significant political force, and pressure group activity of this kind provides the impetus for a large proportion of political and governmental activity at the level of state government and elsewhere. An organization like the Society for Preservation and Encouragement of Barbershop Quartet Singing in America is not normally concerned with political or governmental policy, but it might conceivably use its influence to seek repeal of a state law prohibiting singing in taverns or appropriation of funds to provide prizes for a state or local barbershop quartet contest.

Many associations have continuing concerns in both the governmental and non-governmental area. Presumably the Barber's Union and the association of swine breeders are made up of people with enough in common to justify the association and hold it together regardless of any possible governmental program, but in each case the association members have a direct stake in possible state government action which would affect their area of joint interests.

In addition to the associations which have important concerns in both the governmental and non-governmental area, there are other groups which organize primarily for the purpose of affecting state governmental action. This would appear to be true of the township trustees association and can be seen when an association is formed in direct response to a proposed governmental undertaking such as the establishment of a wildlife refuge or the building of a reservoir.

This tendency of people to form associations with their similarly situated fellows has been recognized for a long time. Aristotle bases his study, *Politics,* on the thesis that "man is a social animal". In discussing reasons why the proposed federal constitution should be adopted, James Madison observes in the Federalist Paper No. 10 that we must come to terms with the tendency of similarly situated people to form "factions" designed to secure governmental policies which will advance their interests. In 1910, Arthur F. Bentley, a famous son of Paoli, Indiana, observed in what has become a classic book, *The Process of Government,* that "when the groups have been stated everything has been stated." Bentley's position is an extreme one, but clearly if we are to understand Indiana's political system, we must recognize the role which is played by associations of Indiana citizens.

In addition to the interest groups which make their presence felt whenever state government seems likely to affect them, the Indiana political scene includes two major groups organized for the specific purpose of attempting to elect their members to political office and, thereby, secure control of the state government. These specifically political groupings are the political parties.

Although many citizens of Indiana and of the entire nation tend to regard political parties as unclean or undesirable features of our political and governmental system, the fact is that without parties, it would be effectively impossible to operate our government successfully. The citizens of Indiana could not be expected to select a governor from among the millions of theoretically possible candidates unless there were some instrument for preliminary screening and a narrowing of alternatives. It would be difficult or impossible for citizens who want the state government to adopt policies moving in a particular direction to make their sentiments felt except through joint action such as a political party permits. There would be no convenient way of finding out the limitations of the job done by one group of office holders and moving to replace them with another if there were not a group such as the out-party keeping watch on the people in power.

The nature of government and the job it does requires some form of political party if any kind of popular control over government is to be achieved. In Indiana, this truth has been understood. Arrangements in the state are designed to encourage working through political parties.

A. Interest Groups

Those groups of Indiana citizens whose leaders feel that the welfare of the group is subject to state governmental action may bring their weight to bear at any or all stages of the political process.

Since interest groups are concerned with governmental programs rather than with party labels, they frequently feel that they have a major stake in the outcome of contests for nomination in primary elections and at state nominating conventions. Partly because it might be disadvantageous if a candidate for nomination were known as the protégé of a particular interest group, endorsements or other overt actions by group organizations are relatively infrequent. It is customary, however, for interest groups of every segment of the

society, labor, business, agriculture, and the others, to provide channels through which information on the issues believed to be at stake in nominating contests can be distributed at least among the more interested members of the association. Although interest groups as such are not likely to endorse candidates, the leaders of these groups will frequently be found working actively for individual candidates through fund-raising and other useful efforts.

Since each major interest group must be prepared to live with the government of the state year after year regardless of which party is in power, group leadership is normally reluctant to take a forthright stand for either slate of candidates in a general election. Instead, they attempt to operate in a more selective fashion, supporting a limited number of candidates either because they seem particularly attractive or because their opponents have made themselves particularly unpopular with the interest group.

Indiana's interest groups are most visible and probably also most active during the sessions of the General Assembly. Operations of individual administrative departments or regulatory commissions do not normally involve more than a small minority of the state's interests. When the Legislature is in session, however, every segment of the state's population can be heavily affected by the results of General Assembly action. Leaders of virtually every interest in the state can be expected to study the agenda for each legislative session searching for possible actions which would either help or hurt members of their particular group.

The "lobby" which operates around the fringes of each General Assembly consists of the active leadership of the various groups which want to see particular programs adopted.

It might seem from one point of view that this "lobbying" in which legislators are urged to adopt or reject particular actions is an undesirable or unhealthy feature of the state's political system. This is an error. Although lobbying does create some problems, any attempt to do away with it would be both unsuccessful and unwise. An important part of our basic right of "free speech" is the right of each citizen to ask his legislative representative to take a particular action. Any simple anti-lobbying law would, in fact, abridge this basic "right to petition."

The best way for Indiana's legislators to find out what the people of the state need and want from their government is to have

the spokesmen for various groups of citizens come and state their case. Frequently legislators who had no awareness of a particular problem at the time of their election will learn from testimony given at legislative hearings by interest groups spokesmen that a specific proposal for state action would remedy a situation which has been bothering a segment of the state or, alternatively, has features which would, if adopted, create more problems than the program would solve.

It would not be a good plan to let each interest group pass laws and make rules to take care of its own area of concern. State policy would come to consist of a collection of programs designed to help individual interests, ignoring the general good of the state. On the other hand, however, it would be very unfortunate if rules governing interest groups were to be made by the state government without those interest groups having been consulted. If a bill to regulate carnivals is passed without letting spokesmen for carnival operators consider the proposal and express their views, there is an excellent chance that the bill will have unintended side effects or otherwise work in a fashion different from what was intended. Legislators cannot be experienced specialists in more than a minor portion of the fields in connection with which they pass laws, particularly in a system like Indiana's where legislative sessions are short and the pace of action is fast. It would be impossible for any senator or representative to take the initiative in informing himself on the many bills which come before him. The informing function played by "lobbyists" is crucially important.

Indiana law requires that anyone who represents someone else before the General Assembly in lobbying for legislative action must register with the Secretary of State. The statute which requires this registration is not precise and it is not clear exactly who comes within its provisions or what penalty will be imposed on someone who fails to comply with the regulation. Despite the limitations, registrations under this statute reveal much about the nature of the lobby in Indiana.

For the 1965 session of the General Assembly, the Secretary of State received a total of 413 lobbyist registrations. This figure counts separately each person who registered as a member of a "team," such as the eight spokesmen for the Indiana State AFL-CIO who signed for lobby registration #1. It also counts separately each registration by persons, usually attorneys, who represent a variety of clients. James P. Seidensticker, for instance, registered as a lobbyist for the Mid-

West Ready-Mix Concrete Association, Indiana Society of Public Accountants, the Sperry and Hutchinson Company (which sells green stamps), and the Indiana Cemetery Association.

Although the list of organizations and persons registering as lobbyists does not give the complete picture of pressures which are exerted on members of the General Assembly, it is possible, by going through the registration list, to gain a general picture of the groups in Indiana which feel they have sufficient stake in the decisions of the legislature to justify whatever effort and expense is required to have their views expressed.

During the 1965 session, the largest group of lobbyists represented the business interests of the state. Fifty-one firms or business associations had a total of 126 individual lobbyist registrations. Some of these business spokesmen, particularly those working for the Indiana State Chamber of Commerce, were concerned with the entire problem of what is known as "maintaining a favorable business climate." Groups such as the Indiana Retail Council, Inc. and the Indiana Manufacturers Association, Inc. were concerned with particular segments of the business community. Overlapping concerns among particular segments of the business community were revealed by such things as the fact that the Indiana Restaurant Association, the Indiana Meat Packers Association, and the Indiana Canners Association were all represented by the same lobbyist. Such segments of the business community as are peculiarly subject to state control feel a particular necessity for having their problems understood by the legislators. The Indiana Motor Truck Association, Inc., for instance, has for many years supported a substantial lobbying operation. In other cases such as that of the "Aluminum Company of America, Warrick Works" presence among the 1965 lobbyists represents evidence of concern with a particular issue before this session of the General Assembly.

Labor unions constituted the second largest bloc of 1965 lobbyist registrations. Twenty-two different organizations registered a total of 65 people. With labor, as with business, the concerns of different registrants vary from instance to instance. Labor's counterpart of business's State Chamber of Commerce is the Indiana State AFL-CIO which, during the 1965 session, was concerned with a number of issues including establishment of a state minimum wage and repeal of the "right to work" bill. More narrowly focused labor

lobbyists included those working for the Indiana State Legislative Board of the Brotherhood of Locomotive Engineers and the Order of Railroad Conductors and Brakemen. Although the spokesmen for the Railroad Brotherhoods had a general interest in legislation affecting union members, their particular concern at the 1965 General Assembly centered on their campaign to insure that the state would not repeal or reduce the effect of Indiana's Full Crew Law.

Seventeen different professional or sub-professional associations were represented by registered lobbyists during the 1965 Indiana Legislative Session. Although such groups as the State Medical Association attempted to affect a relatively wide range of legislation, the typical concern of the professional association lobbyists involved efforts to insure that what they regarded as inadequately trained persons would not be allowed to enter the field and that competition would be restricted to acceptable levels. Most of these professional associations already are protected by a system of state licenses. The Indiana Hairdressers and Cosmetologists Association, Inc., for instance, having previously won a licensing plan, concentrated its 1965 lobbying effort on such things as an apprenticeship program and a bill to outlaw brush rollers in beauty shops on the grounds that these cannot be sterilized satisfactorily. The Indiana Psychological Association, on the other hand, has never been given the support of a licensing system. During 1965 the lobbyists for this group devoted their efforts to an unsuccessful compaign to restrict use of the term "Psychologist" to persons with specified types of training. The argument for the bill was that in the absence of a licensing arrangement, Indiana citizens are being victimized by untrained charlatans who purport to be psychologists but, in fact, are not in a position to provide sound psychological counseling. The campaign against this bill, which was successful in 1965 but may very well not prevent its passage in a future session, centered on a belief that the bill as drawn might interfere with such things as aptitude testing programs now being carried on satisfactorily by persons who would not meet the standards suggested by the Psychological Association.

The agricultural interests of Indiana were represented among lobbyists at the 1965 General Assembly by six organizations and twenty-three individuals. The largest of these organizations and the ones concerned with general programs were the Indiana Farm Bureau, Inc., the Indiana Farmer's Union, Inc., and the National Farmer's

Organization of Indiana. The limited significance of the number of lobbyists registered by an organization is clearly illustrated in the case of these groups. The NFO, which has fewer members and clearly had less influence on legislators than the other groups, was represented by 14 registered lobbyists, whereas the Farm Bureau, much the most important spokesman for Indiana agricultural interests, registered only four people as lobbyists. Special focus interests in the agricultural area are illustrated by the efforts of the Indiana Dairymen's Association for which Marshall Kizer, a former majority leader of the State Senate, directed lobbying efforts designed to prohibit grocery stores from using milk as a "loss leader" in a fashion likely to disrupt regular milk distribution.

Twelve of the organizations represented by lobbyists at the 1965 General Assembly were units of local government or associations of local government employees. These groups had widely varying interests. Groups such as the Indiana Prosecutors Association and the Indiana School Boards Association have a continuing interest in state regulations which affect operations of the segments of local government with which they are concerned. The Indiana State Teacher's Association, the largest organization of local government employees in the state, represents the concern of its members in seeing that appropriations and statutory regulations of local schools meet standards acceptable to the teachers of the state. Other organizations concerned with employment practice by units of government within the state included the Indiana Federation of Teachers, which is a smaller and somewhat more militant competitor of ISTA, and such groups as the Indiana State Association of Fire Fighters. Several individual units of local government were represented by one or more lobbyists at the Legislature: the City of Beech Grove, the town of Crane, and the metropolitan school district of Shakamak. Each had a problem which was felt to justify representation in the lobby.

In addition to the several groups of lobbyists discussed above, there were in 1965, as at previous sessions, many other groups or even individuals who appeared before legislative committees or otherwise attempted to generate support for legislative action in a fashion which led to compliance with the Lobby Registration Act. Several groups, such as the "Interested Citizens Committee" and "the North of 40 Committee," had names so general that they do not reveal the focus of their interest. Some groups such as the "Taxpayers

Federation, Inc." and "Indianapolis Council of Women, Inc." are names which indicated they represented substantially more citizens than were active in the organization. Some groups such as the "Committee to make Hospital Laundries Sanitary" were clearly specific in their focus of concern. Some groups such as the "Indiana Citizens to Abolish Capital Punishment" were clearly motivated by something other than self-interest. The League of Women Voters and a few other organizations represented general concern for problems of good government rather than interest in any single area of policy.

The effectiveness of these various lobbyists depends on a variety of factors. If they are presenting actual information of which the legislators would otherwise have been unaware, they may succeed in affecting legislative policy even if they represent no one other than themselves. If, on the other hand, they are attempting to establish the desirability of a possible policy or program in terms of its impact on the members of the group which they represent, the legislators will want answers to a number of questions. How large is the group? How strongly do its members feel about the issue with which the lobbyist is concerned? What evidence is there that the group membership has expressed itself on the issue for which the lobbyists purport to be representing them?

Although each legislator is concerned with the general good of the state, he is specifically concerned with the effect of possible state programs on his immediate constituents—the people who elected him in the last election and will decide whether or not to re-elect him in the future. Seasoned legislators develop considerable skepticism with which to treat lobbyists who announce that they are representing so many thousand citizens of a given category. Effective lobbyists are aware of this problem and have developed a variety of techniques by means of which they attempt to maximize their effectiveness. Various organizations, including the State Chamber of Commerce, the AFL-CIO, the Farm Bureau, and the League of Women Voters, go to considerable lengths to insure that their legislative agents will not speak for the organization except on issues with which the organization membership has had an opportunity to express itself either at a state convention or through such a device as a mail poll. When an issue is of major importance to one of the larger lobbying groups, their representatives in Indianapolis will take account of the legislators' tendencies to minimize appeals which come from

outside their individual districts. State Chamber headquarters, for instance, may communicate with local chambers of commerce throughout the state and with individual business leaders urging them to communicate with General Assembly delegations from their particular counties explaining why a particular proposal would be either helpful or harmful from their perspective.

The interest groups and their lobbying activities make a vital contribution to Indiana's political life. They fill a role which could not be satisfactorily taken care of either by citizens acting in their individual capacity or by the political parties. It is true that there are potential problems. If the policies of Indiana state government were shaped in response to nothing except the balance of interest group pressures, the general interest would not be well served. In particular instances, an interest group may be able to apply pressure of a type or quantity which is not conducive to the good of the state. On balance, however, the successful operation of Indiana's political system owes a great deal to the active interest groups and their spokesmen. In place of the condemnation of "pressure group tactics" which is occasionally encountered, it might be more productive to criticize those interests in the state which refrain from organizing or taking whatever steps might be necessary to insure that the makers of state government policy are aware of the impact of existing or possible state programs on their portion of the population.

B. Political Parties

In Indiana, as in other parts of our nation and wherever responsible government is conducted in a meaningful fashion, political parties play a vital role.

Many Americans are reluctant to accept the necessity of political parties. The "independent voter" is frequently looked upon as the ideal type of citizen. The "spirit of faction" about which President George Washington warned the nation in his farewell address is frequently viewed as a condemnation of party loyalty or partisan political activity. During the Progressive era in the first part of this century, it was widely felt that if government could be rescued from politicians and parties, the triumph of the cause of good government would be assured. Although the over-simplified anti-party views of progressivism have now withered, many states still have legal provisions

designed to restrict the influence of parties and their leaders, and every report of corruption and of apparent high-handedness on the part of a party's leaders generates new criticism of parties in general.

One of the distinguishing features of the Indiana political scene is the extent to which its arrangements, both legal and traditional, tend to encourage channelling of political activity through the mechanism of its two major parties, both in the selection of office holders and in the operation of state government.

There can be no definitive answer to the question as to what proportion of Indiana citizens belong to one of the two major parties because there is no definitive definition as to what constitutes "belonging." A large majority of Indiana voters register as Republican or Democratic rather than Independent and therefore are eligible to vote in the primary election of their party if they choose to. For most purposes, this indication of allegiance which is given to the voter registration official is probably the most meaningful measure of membership in Indiana political parties. One alternative measure of "membership" might come from the answer to the question, "In elections for state offices do you usually vote Republican, do you usually vote Democratic, or do you shift around from time to time"? Slightly over 65% of a carefully drawn sample of Indiana voters indicated support for one party or the other when asked this question in early 1964. The figure is taken from a confidential poll sponsored by a candidate. Since this means that one party is "the usual" one, this degree of affiliation will probably be enough to shape their vote in all cases except where they are particularly aware of individual candidates or issues. This means that in an important sense, at least 65% of Indiana adults are members of a political party. It is also true that since "independence" is frequently regarded as more desirable than partisanship, a substantial proportion of the voters who indicated that they "shift around from time to time" actually operate as supporters of one party or the other.

Although it is difficult or impossible to specify what constitutes a "membership" in Indiana parties, there is no room for confusion as to the structure of these parties' organizations. State law spells out in detail how party organization is to be structured and how its office holders are to be selected.

C. Local Party Organization

The basic building blocks for the formal organization of Indiana political parties are the precinct committeemen, one of whom is elected by the party's members in the more than 4300 election districts or "precincts" in the state in the primary election—which is held on the first Tuesday after the first Monday in May in even numbered years. The elected committeeman is entitled to designate a precinct vice-committeeman, required to be "of the opposite sex." On the Saturday of primary election week, the precinct committeemen and vice-committeemen in each county gather to elect a county chairman and vice-chairman. The county chairmen and vice-chairmen in each Congressional district select district chairmen and vice-chairmen for the 11 Congressional Districts and these 22 people constitute the state committee of the party for which they elect a chairman and vice-chairman. This organizational pyramid would seem to be neat and clean. It does, in fact, provide a more systematic structuring for Indiana parties than is found in most states. There are, however, a number of complications.

Whereas in theory the party membership in the precinct makes its wishes felt through the selection of the precinct committeeman, in actual practice this selection is normally made without any choice being readily available to the voters. In only a minor portion of the state's precincts does more than one member of the party appear on the ballot or voting machine as a candidate for precinct committeeman. The position tends to go by default to anyone willing to assume the responsibility, and in a substantial number of cases, there is not even one candidate. Vacancies in the ranks of precinct committeemen caused either by failure to elect one or by death or resignation between elections are filled by appointment of the county chairman.

Lest the limited number of contests for precinct committeeman be misinterpreted, it should be pointed out that the fact that only one name appears on the ballot does not necessarily mean that only one person would have been interested in the job. It may mean, instead, that the one candidate seemed so difficult to defeat that although several other people would have liked to be elected, they each decided it would be inadvisable to file as a candidate in opposition to the other person. In some instances, this voluntary decision not to contest selection as a precinct committeeman stems from the fact that the job is

of only marginal interest to the potential candidates and does not seem worth fighting for. In other instances, particularly when jobs with the local county or state government are at stake, the election to a precinct committeeman post may seem a thoroughly attractive prize to a number of party members in the precinct. In such a circumstance, it is normally only an incumbent precinct committeeman who has enough status to discourage competitors from filing as candidates against him.

Each precinct committeeman is responsible for advancing the cause of his party within his jurisdiction. In theory, the basic means of accomplishing this is a survey of precinct residents which produces a list of people who are registered to vote and have indicated their support for the committeeman's party. In some instances, the precinct committteeman will do considerably more than merely compile this list of precinct residents and their political orientation. He may devote considerable effort to propagation of what he regards as his party's stand on important political issues and may try to cultivate feelings of friendship or gratitude among precinct residents in the hope that this will induce these people to vote for candidates of his party. He may develop a group of assistants, sometimes known as "block captains" who will supplement the efforts which he and his vice-committeeman make. In many precincts, however, the committeeman's expenditure of effort is sharply limited and the candidates and party leaders consider themselves fortunate if they find the committeeman has, in fact, canvassed the precinct thoroughly in time to secure the registration of new residents who support the party and has a reasonably accurate "poll book" ready for the general election.

Doing even a moderately good job as a precinct committeeman requires a significant amount of time and effort. Since the position carries no salary or other direct compensation, it is reasonable to wonder what leads people to seek the office by becoming candidates at the election or even to accept appointment from the county chairman. The fact is that a substantial proportion of precinct committeemen seek this office and perform its duties in exchange for appointment to a position in the local county or state government or the prospect of such an appointment when their party succeeds in winning an election. These patronage-seeking party workers played a dominant role in Indiana politics of an earlier era and in most areas they probably still outnumber any other group. There are, however, many

precinct committeemen who have no interest in a government job. They may view work for their party as a means of advancing the principles for which they feel the party stands. They may do precinct work as a favor to a party leader, office holder or candidate. For many precinct workers a major attraction seems to be the opportunity which this activity provides of meeting people in their neighborhood, taking part in a group effort which at least occasionally has elements of drama and excitement and of acquiring a measure of personal authority and power. A precinct committeeman does not become a dignitary of the first rank by virtue of his office, but he is a person of some significance in his political party and in his community. In most Indiana county organizations, there is a continuing contest for control of the party organization between at least two groups of would-be leaders. A precinct committeeman who listens to the appeals of the two sides and decides which of the candidates for county chairman he will support is entitled to feel that he has played a significant part in shaping the kind of system under which he and his fellow citizens will be living.

One interesting feature of political party work at the precinct level involves the increasingly important role played by women. In many instances, the bulk of the work in the precinct is done by a female vice-committeeman who may get active and effective support from a substantial number of other women in the precinct. In a small but growing number of instances, the person elected as committeeman may, in fact, be a woman. The law requires that she appoint a man as her vice-committeeman, but where this happens, it is probable that the woman who was elected will do the bulk of the work. With the increasing impact of labor-saving devices in the kitchen and other developments which provide women in our society with more time for outside-the-home activities than was previously available, it will not be surprising if the number of women elected as precinct committeemen in Indiana increases substantially in the years ahead.

In some areas of the state, the second level of formal political party structure consists of Ward Chairmen who may either be elected by the precinct committeemen and vice-committeemen within the ward, or serve by appointment of the county chairman. It is also possible for the precinct workers within a city to organize as a City Committee headed by a City Chairman who is assigned responsibility for directing

the campaigns for municipal elections which are held in Indiana cities the year before each presidential election. Both Ward and City organizations, however, are outside the main channel of the party hierarchy. It is as a member of the county committee that the precinct committeeman casts his most important vote, and it is the county chairmen and vice-chairmen who make up the second major level in the organization of Indiana parties.

A County Chairman is a substantial political figure. No person is elected to this position without the support of a majority of precinct committeemen and vice-committeemen in his county, and this normally comes only after he has demonstrated both loyalty and effectiveness as a political leader over a substantial period of years. Effective service as a county chairman requires a substantial portion of a person's time. Motivations to political work at the county level are probably at least as varied as are those in the precincts, but just as more efforts are required to do a satisfactory job in this capacity, there are greater direct rewards available for those chairmen who are interested in them and a substantial proportion are. The county chairman of the party which is in power at the state level is by custom given control over the staffing of the License Branches in the county. He may serve as Branch Manager himself or may assign this position to someone of his choosing. The schedule of fees charged for license plates and drivers licenses is such that control of License Branches provides an income ranging from a few thousand dollars in the small counties to a good many thousand dollars in the larger counties. This allocation of jobs such as License Branch Manager as a reward to leaders of the victorious political party is "patronage" or "spoils" in the pure form and tends to offend all those critics of government who regard political parties as unhealthy. The fact seems to be, however, that except for occasional instances of misbehavior which recently have involved attempts to evade a state requirement that automobile registrations not be granted to persons who have unpaid property taxes, the system for distributing state licenses in Indiana seems to work at least as well as the system in most other states. If it be true that political parties are an essential feature of a large scale system of responsible government, that effective operation of political parties requires substantial investment in time and effort, and that this leadership effort will not be exerted unless there are some rewards available to these leaders, then it

may be that the awarding of control over these license branches to the leaders of the victorious party is, on balance, a healthy feature of the Indiana political system.

D. Congressional District Party Organization

The focus of political party organization in Indiana and other states is the State House. The prime concern of state-oriented political workers is the victory in contests for Governor and other state executive officials and election of as many state legislators as possible. Congressional elections have a significantly different focus, which means they are not automatically tied closely to the main body of party effort. In many states, Congressional candidates are forced to put together what are essentially individual organizations. To a substantial degree, they find themselves treated as step-children of the party organization.

It is true in Indiana as elsewhere that the focus of Congressional campaigns on development of majority support in a particular segment of the state for the purpose of gaining a legislative seat in Washington creates difficulties in integrating these campaigns with county or statewide efforts focused on control of the State House. The tendency to isolate Congressional District politics from other party efforts is minimized in Indiana, however, by the nature of the formal party organization which includes Congressional Districts as a major level of the party hierarchy.

Until the Congressional redistricting of 1965, the Indiana system was neat and clean. In the less heavily populated areas of the state where a number of counties were grouped together to constitute a Congressional District, the County Chairmen and Vice-Chairmen in that district came together shortly after their election to county office to select from their number a man and woman who would serve as District Chairman and Vice-Chairman and thereby become members of the party's state committee. In Lake and Marion counties, each of which constituted a Congressional District by itself, the county chairman and vice-chairman could either appoint themselves to the district offices and thereby become members of the state committee or assign these positions to other people of their choice. With the redistricting of 1965, which gave Marion County all of one Congressional District and parts of two others, the pyramid became less simple but the general system has been continued. The Marion County

Chairman and Vice-Chairman have complete say in choosing the offices for the district which lies completely within the county. And Marion County representatives chosen by precinct committeemen in the affected areas have votes in the selection of officers for the two other districts in which Marion County townships are put together with other counties.

In elections to district offices, as with similar elections at the precinct and county level, the responsibilities of office-holding run both up and down. The district chairman is in charge of party affairs within his area, but in many circumstances his primary role is played as one of the 22 people who have a vote for the selection of the party's state chairman.

E. State Committee Headquarters

Formal leadership of a political party in Indiana is in the hands of the chairman of its state committee who is elected by the twenty-two district chairmen and vice-chairmen who constitute the state committee. The tendency of Indiana politics to concentrate political power and responsibility in the party hierarchy means that the state chairmanship is an important and demanding position. Many lines of control run over the chairman's desk.

It is true that the effective leadership of the party does not always come from the chairman. When the party is in control of state government, the governor is the effective leader in party affairs and the state chairman normally functions, in effect, as his subordinate for partisan activity. In these circumstances, the state committee normally elects as chairman the person whom the governor has designated as his choice. Even when the party is out of power, there will normally be at least one major segment of its power structure which will resist any attempt at control which the state chairman may exert. Despite these restrictions, however, the state chairman of a party in Indiana wields very substantial power.

Whereas in some other states the political parties at the state level become almost dormant in the period between campaigns, Indiana parties support state headquarters operations of at least half a dozen people throughout the four year political cycle. The Republican state committee has, for many years, occupied the entire top floor of the Claypool Hotel and the Democratic state committee occupies a comparable suite of offices. In addition to the state chairman, the head-

quarters staff includes the state vice-chairman who is also elected by the state committee and a number of other people who are usually appointees of the state chairman.

In most circumstances, the state committee elects one of its own members to serve as state chairman. This is not a requirement, however, and the Republicans' 1965 election of a former secretary of state, who had been active in party affairs for many years, illustrates the possibility of the committee's going outside its own ranks in the selection of a chairman.

The functions of the state chairman are varied. They shift with the different stages of the political calendar and with the fortunes of his political party. Always he must be concerned with problems of the party's organization, stimulating workers in districts or counties where the organization appears inadequate, assisting and encouraging party workers throughout the state. With the assistance of finance committees, which are usually made up of major donors, he works at raising funds for the support of party activities. When his party is in power, his financial responsibilities include supervision of the funds contributed to the party treasury by patronage appointees who normally contribute the equivalent of one week's pay each year as membership dues in the "Two Percent Club" which has been a feature of the Indiana political scene since its establishment in the 1930's. When his party is out of power, the state chairman is expected to supervise a close watch on the way state business is conducted and see to it that he or some other spokesman for his party capitalizes in speeches or press releases on any features of the record being made by the other party which may make it politically vulnerable.

Finances are always a major problem for party leadership. Although the party in power gets very substantial support from the contributions of patronage employees and other citizens who for various reasons are willing to contribute to the party in power, both the in-party and the out-party are almost incessantly attempting to increase the amount of funds available to them. Fund-raising dinners with charges of up to or even beyond $100 per person have become standard events. In recent years, each party has published what purports to be a reference book about developments in the state and serves the useful purpose of providing a vehicle in which friendly firms can place advertisements at prices which make the publications profitable for the parties. Each party has also attempted to encourage

voluntary contributions of one or more dollars from its supporters among the electorate. Results of these campaigns for small contributions have been so limited, however, that they have come to be regarded as more effective in the stimulation of grass roots activity and enthusiasm than in the raising of money in useful quantities.

Each state party headquarters provides office space not only for the work of the state chairman and the regular organization leaders, but also for the work of a variety of auxiliary organizations, including particularly the women's and youth groups. In many states, these groups have a considerable measure of autonomy and occasionally are used as vehicles for challenging the leadership of the regular party organization. In Indiana, however, the traditional arrangement has been for virtually all aspects of the party work to be closely coordinated under the leadership of the state committee chairman and his staff. Indiana, for instance, is one of only a very few states in which the presidency of the State Federation of Republican Women is assumed automatically by the state vice-chairman, a leader of the regular party organization, rather than elected by the membership of the women's clubs. Not until 1966 were the state's Young Republicans allowed to elect their own chairman rather than having him appointed by the chairman of the senior party's state committee. It is true that the state president of the Young Democrats has for a number of years been elected by the members of that organization, but this has not served to create any significant cleavages between the Young Democrats and the regular party.

From time to time various groups within the state have established autonomous organizations which could give voice to views different from those represented by the leaders of the regular parties. These dissident groups, however, have tended to be short-lived. In Indiana, the only effective road to substantial influence in party affairs runs through the regular organization.

The state chairman and his staff do not, in theory, support any individual candidates in their campaigns for nomination. In fact, of course, the chairman like other leaders of the party has views as to who would make the strongest candidate and the best office-holder, but his position is such that he does not play an overt role in nomination politics. During the campaign for primary elections, the pace of activity at state headquarters quickens, but the active campaigning is done by the individual candidates and their staffs rather than by the official leaders

of the state organization. It is the responsibility of the state chairman to see that proper arrangements are made for the biennial nominating conventions, but here, as with the primary, the state chairman does not overtly take sides. Such facilities of his office as the state committee Addressograph are made available to all candidates for nomination. The state committee sometimes arranges meetings of convention delegates from one or more counties at which the various candidates for nomination may present themselves for evaluation. The principal centers of excitement, however, are in the headquarters of the individual candidates rather than in the office of the chairman. This impartiality on the chairman's part may not be easy to maintain if, for instance, he knows that one of the leading candidates for the gubernatorial nomination will keep him in office and the other will replace him. It is, however, an essential feature of the political system. The fact that unsuccessful candidates for nomination very rarely complain about having received anything less than fair play from state committee headquarters is indication of the extent to which this demand for impartiality has been met.

During the general election campaigns, unlike the periods before primaries and conventions, state committee headquarters is normally the center of political activity. Individual candidates, particularly those running for the most important offices, normally have their own headquarters and their own campaign staffs. If the campaign is to be well run, however, it is highly desirable that efforts of the individual candidates be coordinated through the state committee. This coordination does not come without friction, but it normally is achieved in reasonably successful fashion.

F. Primary Elections

Indiana holds primary elections on Tuesday after the first Monday in May three out of every four years. In the year prior to Leap Year, these are primaries for municipal elections in which mayors, city councilmen, and other city officials are nominated. In even-numbered years the primaries serve several purposes; precinct committeemen are elected, party candidates are nominated for county and congressional offices, and state convention delegates are elected for duties described below. In presidential years, members of each party choose from among the presidential candidates who have entered the Indiana presidential preference primary.

Municipal primaries normally are decided in terms of either the personal popularity of competing candidates or essentialy local issues. Although some of these contests may have overtones connecting them with factional divisions within state parties, they are normally of purely local significance.

The Indiana presidential preference primary, like those held in approximately twenty other states, is a means through which the members of the party may express their sentiments as to the relative desirability of various candidates for their party's presidential nomination. Under Indiana law, delegates representing each congressional district are required to give their first ballot votes to that candidate who received the greatest support in their district and delegates representing the entire state are required to cast their first ballot votes for the candidate who received the largest total vote in the entire state. Results of the primary have no effect after the first ballot, and since the Indiana system does not give the voters direct influence on the choice of national convention delegates as do presidential primaries in some other states, delegates from Indiana are free to support their individual choices or the choice of the state's party leaders if the nomination requires more than one ballot. The effectiveness of this presidential preference primary device is limited by the fact that the choice available to voters is confined to those candidates who have chosen to enter the Indiana primary, and since loss of a primary is considered a tactical set-back, it frequently happens that only the one major challenger who feels he has the best chance of winning in Indiana decides to have his name appear on the ballot. In 1964 when President Johnson had decided not to enter any state primaries, Alabama's governor George Wallace sought to capture the first ballot support of Indiana's delegation to the presidential convention, and as a means of preventing this, Governor Welsh was drafted to serve as a stand-in for President Johnson. In the 1964 Republican presidential primary in Indiana, the closest thing to serious competition which Senator Goldwater received was from Harold Stassen.

Primary contests for county offices normally have little more connection with state issues than do those for city elections. In the counties which are predominantly Republican or Democratic, the minority party will frequently have trouble inducing even one candidate to file for each office, while the majority party will have spirited

contests, particularly when the incumbent office holder is not running or for some other reason there is no obvious leader in the race. With three or more candidates in a primary contest, it is not unusual for the results to show that the leading candidate had less than 50 per cent of the vote. In these cases, it is always possible that more than half the people who voted in the primary would have preferred the candidate who finished second or third to the one who finished first, but in spite of this, the candidates who lead in the primary elections with pluralities are given the nomination and run as their party's candidate in the fall. In some parts of the nation, particularly what have been the one-party areas of the South, there are "run-off" primaries between the two highest candidates in any primary election where no one receives half the total vote, but in Indiana where there is normally effective competition in the general election, run-off primaries have never been instituted.

In nominations for the General Assembly, it is not unusual to find that only a single candidate has filed for a seat and that he therefore wins without primary election competition. Where this happens, it is normally a case of a popular incumbent who seems to potential challengers to be too popular to be defeated, or, alternatively, an instance of nomination by the minority party in a General Assembly district where the chances of the nomination's leading to election in November are too slim to justify the expense and effort of a primary contest. In many areas of the state, however, nomination as candidate to the State Senate or House of Representatives is hotly contested. Although most of these primary contests are essentially personal duels among the individual candidates, they frequently have ties to factional divisions within the state parties. Although state party leadership does not openly enter these contests, it follows them closely and it is not unusual for someone in Indianapolis to ensure that the primary candidate who looks like a potential addition to his wing of the party receives enough financial assistance so that he can afford an effective primary campaign. In somewhat the same fashion, leaders of the state party can be expected to keep close watch on the people who are filing as candidates for seats which they think the party has a chance of winning in the fall. If no attractive candidate seems likely to file under his own initiative, the state leaders may well attempt to encourage the candidacy of a respected citizen who would be able to wage a more effective campaign

for the November election than any of the people who have filed without being urged to do so.

Nominations for Indiana's eleven Congressional seats are decided in the primary elections and in each district at least one of these nominations is a highly sought prize. Incumbent Congressmen frequently avoid the necessity of defeating primary opposition largely because any potential challengers see no serious hope of victory, and in predominantly one-party districts, the nomination of the minority party sometimes goes by default to some one person who is willing to be a candidate despite the lack of any serious chance of success. Election to Congress, however, is a prize which seems attractive to so many people that wherever there seems to be a chance that the party's nominee can win victory in the fall, there will be a substantial number of potential candidates in the primary, unless some one candidate, such as an incumbent, appears to be unbeatable. The only reason these Congressional primaries do not normally attract enough active candidates to make the contest completely chaotic is that many of the potential entrants in the race decide on the basis of preliminary investigation that the chance of winning is too slight to justify the time, effort, and above all the expense of the campaign which would be required if they filed their names with the Secretary of State and became active candidates for the nomination. Party leaders do not normally like to see so many people file for an office that the result will be inconclusive. Although every member of the party has a right to file as a candidate for Congress, Indiana actually has relatively few nuisance candidates who enter their names on the ballot without making honest efforts to campaign. To at least some degree, this is a result of the suggestions from party leaders that this token candidacy is damaging to the party, and if a citizen is interested in political activity, it would be more productive to choose some other course of entry.

Primary campaigns, unlike the campaigns of the general election, must be waged by the individual candidates and their personal supporters. Frequently there are understandings that all or part of the organization in a given area will give quiet support to a candidate for Congress or other office, but the main burden falls on the individual who seeks the nomination. He must build an organization and secure whatever funds will be expended for his campaign.

Each Congressional district includes over 400,000 people—of whom approximately 50,000 will vote in the Congressional primary. Only a small minority of these people are sufficiently interested in individual primary contests to take the initiative in finding out who the candidates are. This means that any candidate for nomination who is not already widely known in the district faces a difficult campaign assignment. He does everything possible to meet in person with regular supporters of the organization in his district; he also attempts to cultivate support among the general citizenry even though he knows that the independents, the uninterested citizens, and the interested members and the politically aware members of the other party will not be voting either for or against him in his primary. One solace is his knowledge that if he is successful in getting nominated, the residues of his primary election campaigning will be helpful in the fall. Because primary competition does provide a clearly legitimate excuse for vigorous campaigning several months before this activity would otherwise seem reasonable to the voters, it may be true that a candidate for a Congressional nomination who is not already known in his district is more fortunate if he is confronted by a challenger in the primary than if he escapes without competition. A principal disadvantage of being forced to wage a primary campaign in these circumstances, as one of the authors of this study can attest from personal experience, is that the financing of the primary campaign uses a substantial amount of funds which might otherwise have been spent in a general election campaign.

G. State Conventions

The most exciting and dramatic events in the four-year cycle of Indiana politics are probably the State Nominating Conventions where candidates for election to state-wide offices are chosen. Indiana is one of the few states in which nominations are now made by convention rather than in primary elections. Delegates to these conventions are elected by the voters in the primary, with each county allocated one delegate for each 400 votes cast for the party's candidate for secretary of state in the preceding general election. The election board of each county decides how the county's quota of delegates to each convention will be divided among the townships, wards and precincts of the county. In some instances, it is the practice to allocate one delegate to each precinct or pair of precincts. In Marion, for

instance, an alternative course is followed and all voters in each ward are allowed to vote for as many candidates for delegate as the entire ward is entitled to be represented by at the convention.

Under normal circumstances, substantially over half the delegates to each party's convention are elected without opposition at the primary. Many of the people who file as candidates for convention delegates also serve as precinct committeemen. Most of the delegates are long-time participants in party activities, and at recent conventions well over half the delegates have also served as delegates at one or more previous conventions.

When there are contests for election as delegate, they may represent either essentially issue-free contests between individuals for personal recognition or struggles between groups which are competing for influence and control at the county and state level and the chance to nominate some candidates or groups of candidates for state office. This contest between what amounts to slates of candidates for state convention delegate normally takes place only in a few counties of the state in any one year.

Each party's state central committee selects a date for the state convention, which must be held in Indianapolis within thirty days following the primary. The two parties' conventions are normally held on different days during the same week of June in the State Fair Grounds Coliseum, with the two parties dividing some of the cost of arrangements. The pattern is for the delegates to arrive in Indianapolis on the afternoon of the day preceding the convention. They meet in district caucuses that afternoon or evening, mingle with each other and visit headquarters which the competing candidates have established, normally in the Claypool Hotel, that night and assemble at the Coliseum the next morning for what is normally a long day's session.

During the 19th Century, this system of nomination by party convention was a universal feature of the American political scene. Party members in each community or county came together and chose in relatively informal fashion a delegation to represent them at the district convention where their candidate for Congress would be chosen, from which, in turn, a delegation would go to the state convention. The sending of a delegation from the state to the presidential nominating convention was the final stage in this multi-level process.

With the coming of new political ideas during the Progressive

Era in the early part of the century, the convention system fell into disrepute. It was decided that good government called for a system in which nominations would be made by the voters directly in the newly-designed system of primary elections. Although the presidential nominating conventions have never left the American political scene, almost all other nominations came to be made in primaries. State conventions continue to be held for such relatively minor purposes as the adoption of platforms, but the responsibility for choosing the party's candidates for state office was given to the participants in the primaries. Forces calling for nomination in primary elections triumphed in Indiana as they did in other states, and from 1915 until 1928 the state adopted a form of primary for the nomination of candidates for Governor and U. S. Senator. The leaders of the two parties were not happy with this system, however, and in 1929 succeeded in securing adoption of the system which is still used, with local and Congressional offices nominated in primaries and state-wide candidates nominated by delegates to state conventions.

The convention system, which seems to permit selection of candidates by "politicians" rather than by "the people" has been subject to criticism ever since the availability of primaries as an alternative means of nomination. The conventions do have a number of advantages. They encourage the maintenence of cohesive political parties as effective instruments of governing. The possibility of having repeated ballots insures that whoever is nominated will be at least acceptable to a majority of the persons making the selection and avoids the possibility of plurality nominations which comes with the use of a primary. Although a candidate for nomination to a major office at a state convention must spend a good many thousand dollars campaigning, the system does avoid the unhealthy effects of the cost of primary elections which in a state the size of Indiana would require each serious candidate to spend well over $100,000 and could mean that by the time he was nominated, he was so obligated to his financial backers as to be considerably less than a free agent from then on.

Despite the arguments which can be made in defense of the convention system, it has been subject to continuing citicism, and as World War II came to a close, the calls for a change in Indiana's system of nominations could no longer be ignored. The system in which county chairmen or whoever else was serving as chairman

of a county delegation announced how the delegation voted for each office seemed to give an unacceptable kind of power to the party "bosses." Leaders of the 1947 General Assembly did not want to return to the system of state-wide primaries, but recognized that it would be politically dangerous to continue the existing system, and in this situation they adopted a compromise plan which is still in effect—providing that in future conventions, there would be voting machines placed on the convention floor and each delegate would cast his vote individually and in secret. This essentially procedural change served to make a fundamental shift in the allocation of power within each convention, giving Indiana a nominating system which is still unique among the fifty states and which also may very well be the most satisfactory arrangement for the selection of state-wide candidates that has yet been contrived. Effective choice of Indiana's nominees is now in the hands of the slightly over 2,000 party members who are elected as delegates to each convention. These delegates normally consult with the other representatives from their county and may decide to cooperate in support of particular candidates. But the secrecy of the voting machine is a crucially important factor in the situation. Most delegates take their responsibilities reasonably seriously. The candidates for nomination attempt to generate delegate support through mailings, individual visits, and other channels, and by the time of the convention, most delegates have considered the relative merits of the various candidates in a fashion which could never be attained by persons voting in a state-wide primary.

At each convention, the party selects nominees for the following offices: (1) Superintendent of Public Instruction; (2) Judges of Appellate Court; (3) Judges of Supreme Court; (4) Attorney General; (5) Treasurer of State; (6) Auditor of State; (7) Secretary of State. In presidential years, the conventions also nominate candidates for Reporter of the Supreme and Appellate Courts, Lieutenant Governor and Governor as well as the party's national convention delegates and the persons who will serve as presidential electors if the party's presidential candidate carries Indiana in November. Candidates for Clerk of the Supreme and Appellate Courts are chosen at non-presidential-year conventions, and at two out of every three conventions the delegates also nominate a candidate for United States Senator.

Procedures for the conduct of state conventions are carefully spelled out in state statutes. One of the few opportunities for variation is in the rule which permits the state chairman of each party to decide whether the delegates will vote on all contested offices at the same time or shall select one at a time beginning with the least important and ending with the nomination for Governor or for Senator if one is to be chosen.

Although a serious candidate for nomination at the convention will have spent a substantial amount of money in publicizing himself to the delegates and must pay to the party a filing fee ranging from $500 to $2,500, depending on the office for which he seeks to be nominated, the cost of becoming a candidate at the convention is relatively modest. This means that there are substantially more candidates than would probably be the case in any system of state-wide primaries, and the fact that there can be repeated ballots means that even though a candidate is the first choice of relatively few delegates, it is possible that he might eventually be nominated as a compromise candidate if the leaders seem to the delegates to be in a stalemate. Convention folklore, in fact, says that the candidate leading on a first ballot is not likely to be the eventual nominee if on any later ballot he fails to have received more votes than he had previously. Each faction of the party is able to support a candidate thoroughly acceptable to it when the proceedings begin, and then if their first choice seems unlikely to be nominated, the delegates can decide which of the effectively available alternatives they regard as most acceptable. As a means of preventing permanent deadlock, the rules provide that if no candidate has received a majority of the votes cast by the time 8 ballots have been taken, then on each subsequent ballot the candidate with the fewest votes will be automatically removed from the running.

By the time the state convention ends, which is usually late in the afternoon or early in the evening, the party is equipped with a slate of candidates to offer the voters of the state in November.

H. Campaigns

Although Indiana's party leaders attempt to maintain political momentum permanently, it is only with the close of the nominating conventions that the formal campaigning for a November election can begin. It is true that Congressional candidates can get head

starts because of their selection in the primaries. It is also true that the State Committees and some optimistic candidates may have made tentative arrangements for the purchase of desirable television or radio time or the leasing of strategic billboards prior to the convention. The bulk of the campaign effort, however, must await the decision of the convention delegates as to who will be the party's nominees for each office.

Although each campaign takes shape in its own unique form, there are a number of problems which must always be dealt with and a number of relationships which always cause tension. Decisions must be made as to the relationship among the campaigns of the various candidates on the ticket. To what extent will each individual candidate's efforts be coordinated with those of the rest of the team and of the state committee? What portion of the funds raised by the state organization will be used for the one or two candidates at the head of the ticket and what proportion will be allocated to candidates for such offices as State Treasurer and Superintendent of Public Instruction? If it is a presidential year, there will have to be policy decisions as to the relationship that will be established between the presidential campaign and the campaigns for state office. If one or more candidates feels that his chance of being elected depends on the success he has in gaining support from independents and members of the other party, to what extent will he be permitted to minimize or even omit references to his party affiliation in his campaign publicity?

Indiana has been in the past, and is today, a fairly competitive party state. Its recent reputation, based largely on its having supported Republican presidential condidates at each election from 1940 through 1960 has indicated a Republican leaning. More recent Democratic successes, however, have thrown this reputation into serious doubt and the best available data indicates that although the state is clearly within reach of either party in any election where it has attractive candidates or issues, the Democrats have a significant statewide advantage in the number of registered voters designating themselves as party members.

Unlike such other states as Michigan and Illinois, Indiana politics has never had a major cleavage in which a heavily Democratic metropolitan center is balanced against a heavily Republican out-state vote. Marion County has tended to be at least as Republican as the

average for the state and only Lake County has provided the Democrats with the kind of massive pluralities that have been crucial for state Democratic organizations able to count on margins from cities like Chicago and Detroit.

In geographical terms, each state campaign in Indiana is conducted on a genuinely state-wide basis. In predominantly one-party counties, such as Lake for the Democrats and some of the smaller rural counties for the Republicans, the minority party always has difficulty maintaining a campaign organization because of the remoteness of any possibility of local victory. There is always, however, the promise of such rewards as appointments to the License Bureaus and the State Highway Department and these incentives, together with such appeals as dramatic state-level issues and the attractiveness of individual candidates, serve to provide each party with at least a reasonably satisfactory organization in each of the 92 counties.

In terms of appeals to different groups of citizens, the campaigns must include components designed to do a variety of things. The faithful party members and workers must be restimulated and encouraged to the point where they not only will vote themselves, but will want to stimulate other citizens. The independent or uncommitted voters must be reached with arguments that will convince them that the good of the state will be served by the election of the party's candidates. Possibly the most important and certainly the most difficult problem is that the campaign must be designed in such a way as to reach the voter who has so little interest in political affairs that he will not voluntarily expose himself to campaign arguments or appeals.

The standard and accepted device for stimulating the faithful is a series of party rallies. These do not normally attract any significant number of people who were not confident they would vote for the candidates even before they decided to attend the rally and, therefore, it is probably true that this part of the campaign succeeds in winning only a minor number of votes. The rallies are always held, however, and do serve some useful purposes. A large crowd at a party function generates helpful press releases. The spirits of party workers are always buoyed when they can look around the room and see that other people share their enthusiasms. It is also true that the candidates themselves probably derive substantial encouragement from being able to spend at least a part of their time with audiences that are enthusiastic and friendly.

The independent and uncommitted voters will not normally attend the party rallies and since they will not come to the campaign, the campaign is taken to them. One traditional means of tackling this job is for the state candidates to schedule visits to many places in the state where large numbers of citizens will be gathered during the summer and fall of campaign years. The county fairs are pure examples of this operation. The county committees in rural counties frequently direct and staff booths which are open to pass out campaign literature and gadgets throughout the duration of the fair. The candidates will normally attempt to visit the booth and mingle with the fair-going crowds for at least part of one day.

In urban areas, candidates are expected to be present at the gates of the major factories so that they can be seen by workers entering or leaving and shake as many hands as possible. Wherever the schedule permits, the party workers may schedule "coffees" in which a group of housewives from a neighborhood are invited to the home of a party supporter where the candidate can make a brief appearance and, hopefully, establish himself as someone for whom the ladies should vote.

Reaching the genuinely disinterested voter is a crucially important but frustratingly difficult task for the candidate. He normally attempts it by arranging to have his name, with possibly a simple slogan, so much in evidence in the state that citizens will become aware of it and will at least recognize the name when they go to the polls. Phone pole placards, bumper stickers, signs for windshields, and billboards are all used in this effort to establish at least the candidate's name. Recent campaigns in Indiana as elsewhere in the nation have tended to put increasing stress for this portion of the campaign effort on spot radio and television announcements and major portions of recent campaign budgets in the state have been allocated for the purchase of radio and television advertisements running no more than a minute.

Partly because funds are always limited and partly because the voters have a saturation point and would eventually be inclined to vote against any candidate who had battered their eardrums or eyeballs over too long a period, the campaigning tempo is held down through the weeks following the nominations and does not begin to reach full speed until after Labor Day. If plans have gone well, the summer will have been utilized to prepare publicity, organize

committees, plan the candidates' itinerary, and bring the campaign effort to a crescendo just before the election.

1. Elections

Results of Indiana elections, like those in other states and other countries, represent the product of a variety of overlapping factors. For anyone attempting to understand the politics of a governmental unit, there may be no question more central to his concern than "what caused the election to turn out as it did?" The troublesome fact is that a complete answer to that question would require complete description and analysis of the political system and anything less than a complete answer is dangerous. By concentrating attention in a particular direction, a single-focus explanation may in fact serve to obscure more than it reveals. It is true, however, that consideration of some factors which contribute to the outcome of Indiana elections may increase understanding of the total system.

Current research in American politics makes much of the fact that each major party enters each particular campaign with what amounts to a running start provided by the many voters who make their choice on the basis of party loyalty. The outcome of each election, this theory says, represents measurement of the extent to which the advantage enjoyed by one of the major parties in this area of partisan loyalty is over-balanced or supplemented by the additional factors of "candidate appeal" and "issue appeal." If Indiana represents any deviation from the national political scene when viewed in these terms, it may be that party loyalty plays a proportionately larger role in Indiana than in most other states. To the extent that both institutional arrangements and Indiana traditions support heavy reliance on two-party competition in the state political activities, there is clearly a tendency to increase the significance of partisan allegiance. The young Indiana resident who grows up in a Republican or Democratic home will be likely to acquire his view on the political world through Republican or Democratic lenses. Barring some heavy pressure, he will be likely to grow up as a member of his parents' party in the same way he grows up as a member of their church.

The most striking evidence of the regularity which traditions of partisan affiliation impose on Indiana politics probably lies in the extent to which differences in attitudes toward the Civil War have

been reflected in partisan alignments of various counties and areas during the past century.

In Indiana as elsewhere in the nation, there are many citizens who consistently cast their votes for Democratic candidates because they have considered themselves Democrats from the time of the New Deal. Votes cast by these people are "party loyalty votes" and everywhere from New York City or Boston to Los Angeles the Democratic party enters an election with this legacy from three decades ago providing a substantial foundation on which it can hope to build to election victory. In Indiana, the regularities established by party loyalty voting are unusually substantial and there are many voters who will customarily support all the candidates of one party or the other because they regard this as "their party" and would feel guilty or disloyal if they did not support it.

No successful campaign can be waged with appeals based solely on party loyalty. Votes gained in this fashion must be supplemented by the results of candidate appeal and issue appeal. It is true, however, that the most attractive candidate available running on the most attractive platform contrivable would have no chance of election in Indiana if he were not running as the candidate of one of the two major parties.

Victory in an election is, in narrow terms, a simple measure of choices made by voters, but in slightly broader terms, it is a result of decisions made by the general citizenry as to whether or not to vote. The decision not to vote is a political act in the same way as a decision to vote Democratic or Republican. Although there are many consistent non-voters in Indiana and many other persons who vote in some elections but not others, voter participation figures for Indiana consistently run several percentage points above the national average and the state's record in this respect places it among the top half dozen in the nation. The results of recent Indiana elections would undoubtedly have been substantially different if either all adults in the state had voted or the percentage of citizens going to the polls had been as low as the national average. The relatively high percentage of Indiana citizens who vote is a result of a number of factors including the large portion of Indiana contests which are felt to be in genuine doubt until the votes are counted. The relatively strong party organizations work at the task of stimulating voter turnout and the large percentage of the citizenry who consider themselves members

of one party or the other means that the share of the population who feel they have a stake in the outcome of the elections goes well beyond the ranks of the party workers. A further factor in the development of the state's comparatively good record for voter turnout has been the relative freedom from institutional interference. Residence requirements of six months in the state, sixty days in the township, and thirty days in the ward or precinct have been reasonable. Door-to-door registration of voters has been available in smaller counties and in urban counties with population under 80,000. Registration centers have been established in various areas during the period prior to each election. Registration in Indiana is permanent for persons who exercise their right to vote. The 1965 Legislature made significant changes in the election laws of the state. These include provision for door-to-door registration in all counties and extension of voting beyond the twelve-hour-period which was previously specified. The changes will undoubtedly serve to increase voter turnout to some extent.

A final factor which plays a significant role in determining the outcome of Indiana elections, particularly those for relatively minor offices, is the form of the ballot or voting machine. In some states it is necessary for a voter to make a specific mark or pull a particular lever to indicate his choice in each contest on which he votes. These are called "office bloc ballots" and tend to encourage ticket splitting. They increase the chance that a popular or widely known candidate for a minor office may be elected even if the person at the head of his ticket runs behind. They also tend to create a situation in which the total vote in contest for minor offices is substantially less than the vote cast in contests at the head of the ticket.

Indiana does not use these "office bloc ballots." In Hoosier elections each party's candidates for all offices are listed in a column and the simple thing for a voter to do is merely make an X in the circle at the top of the column indicating his support for all the candidates of that party. Textbooks customarily refer to this device of the party-column ballot as an "Indiana ballot" as distinguished from the "Massachusetts ballot" in which the candidates for each office are grouped and it is not possible to vote for all candidates of a party with a single mark.

The adoption of voting machines, which has now taken place in more than half the counties in Indiana, could have substantially reduced the coattail effect of successful candidates at the head of a

party ticket. In many states, a person using a voting machine is required to pull down a key for each candidate he wishes to support. If this type of voting machine had been introduced in place of the party column ballot, Indiana would have been moved significantly toward campaigns based on individual candidates rather than on party slates. The fact is, however, that the form of voting machine used in Indiana has had exactly the opposite effect.

In counties using paper ballots, there are separate ballots for state and federal elections and anyone wanting to vote straight Democratic and straight Republican is required to make two separate marks. The Indiana voting machine has all candidates, state and federal, of each party in a single row and there is a party column lever which serves to lower the keys over every candidate of that party.

In most counties using voting machines, the voters are instructed that to activate the machine they must pull one or another party lever and that if they wish to split their ballot, they must then lift up the keys of any candidates of "their party" whom they do not wish to support and then lower the keys for the candidates of the other party whom they wish to support. In some areas, including St. Joseph County, the use of the party column lever is optional rather than compulsory, but even there, it is much easier to pull the single lever and cast a vote for all the candidates of a single party than to support a split ticket.

It is true that in every election, there are instances of individual candidates who have run far more effective races than have other people on the ticket with them and that in some instances, these people have been victorious while their fellow-candidates have gone to defeat. It is still true, however, that the institutional arrangements under which Indiana elections are carried on tend to maximize the likelihood that victory will go to all the candidates of one party, and at the time of the next election, the voters of the state or county will make the clear choice as to whether to leave in power the party which won the preceding election or replace it with the candidates of the opposition.

Chapter Three

THE GENERAL ASSEMBLY

A. What It is Supposed to do

In a representative democracy like ours, any legislature—state or national—has two main tasks to perform: collectively, it must establish most (though not all) of the laws that govern society; its individual members must serve as channels of communication between the people they represent and other branches of government. Let us see what is involved in these two tasks in Indiana.

Making The Laws

It might be well for us to understand, first, that no legislature makes *all* the laws for the society it serves. There are two other lawmaking authorities and two additional *sources* of law. Besides our legislature, the General Assembly, the two other lawmaking authorities are (1) the courts of Indiana, which necessarily *create* new law in the act of interpreting and re-interpreting old laws; and (2) the state administration, which, acting under power granted to it by the legislature, issues rules and regulations having the full force and status of law. The two additional sources of law are (1) the Constitution itself, as we have already seen, and (2) the large body of *common law* which came into existence centuries ago among our English forebears and which formed the foundations of our own legal system.

But if the General Assembly is not the sole lawmaker in the state, it is certainly the principal one. It is true that, in cases of conflict, court interpretations of the Constitution take precedence over acts of the legislature—but such cases are few and far between. And the General Assembly can, of course, initiate Constitutional amendments which, if approved by the voters, can overturn any specific court decision. Moreover, where the courts make new law through interpretations of existing ordinary statutes or common law, the General Assembly can nullify such decisions through the normal lawmaking procedure.

As for administrative lawmaking, we have already noted that administration officials can issue their rules and regulations only if

they are empowered to do so by the General Assembly or Constitution. And so it goes without saying that the original source of authority—the General Assembly—can repeal or rewrite any such rule that it finds not to its liking.

The legislature, then, holds clear primacy in the lawmaking phase of state government. But what does it do with its primacy? What kinds of laws does it make?

The 93rd General Assembly meeting in regular and special sessions in 1963 enacted, among other things, a complete overhaul of Indiana's tax system, the largest budget in our state's history, the first legislative reapportionment since 1921, and a civil rights law which was generally regarded as one of the two or three most forceful and effective in the nation. The same General Assembly raised the maximum salary of bailiffs in Indianapolis municipal courts, authorized the sale of hatchery-raised fish, and outlawed tattooing.

Our 1965 General Assembly, the 94th, repealed the so-called "right-to-work" law, effected sweeping changes in voting practices, and enacted an even larger budget than that of 1963. It also repealed a 1915 law concerning the weighing, counting, and shipment of watermelon, it granted Wabash County's Circuit Court permission to operate 12 months a year if necessary, and transferred control of an experimental orchard in Lawrence County from Purdue University to the state. Amidst much debate, it also abolished capital punishment —the bill later vetoed by the governor; the capital punishment repeal was slated for the 1967 session to fight over.

The range of action is obviously enormous; the legislature does (and constitutionally must) deal with everything from sweeping reforms which intimately affect every citizen of Indiana, to matters of almost trivial detail affecting a handful of people in a single county or municipality. It has to pass on proposals ranging in complexity from those which only a few highly trained experts among its members can really understand to those which would hardly strain the competence of a junior high school civics class. In terms of numbers, General Assemblies during the decade 1955-1965 have handled an average of about 1,000 bills each session and enacted into law about 40 per cent of these, or 400 per session. No one should underestimate the amount of sheer hard work involved in figures of that magnitude. Still less should we underestimate the immense degree of responsi-

bility we place upon our legislators in the law-making phase of their activities.

Representing the People

The second main task of any legislature in our kind of political system is to serve, through its individual members, as a channel of communication between the people "back home" and the rest of the government. For convenience sake, we may call this "representing the people"—but it is important not to lose sight of the fact that our legislators are also representing us, in a very real and important sense, when they perform their lawmaking function. The difference in the two kinds of representation is perhaps best explained by illustration. When State Senator Jones (for example) makes up his mind as to how he is going to vote on a particular bill, a great number of factors necessarily goes into that decision. *One* factor, certainly, is how the people back home feel about it. But, as we shall see later on in detail, feeling back home can be—and oftener than not is—a very unreliable guide for the legislator. *On the overwhelming majority of his voting decisions, Senator Jones "represents his constituents only in the sense that he is the man whom they have entrusted to make decisions about matters of which they have little or no knowledge and in which they have little or no interest.*

By contrast, when Farmer Brown writes Senator Jones and asks for his help in persuading the State Highway Department to resurface a stretch of state road that crosses through Brown's property, and when Senator Jones agrees to do so and makes a trip to Indianapolis to present the case to the appropriate official in the Department, he is obviously "representing" his constituent's interest in a direct, immediate, and unambiguous way.

Now it is perfectly true that on a certain number of issues before the General Assembly, Senator Jones by voting one way or another may be acting on behalf of a group of his constituents with very nearly the same clarity and force as when he speaks to someone in the Highway Department on Farmer Brown's behalf. The distinction is, in *every* case of the "Farmer Brown" type, Senator Jones is representing a specific person or persons in a direct and immediate way, while in his overall voting behavior, such direct and immediate representation of a particular interest is, in strict numerical terms, the rare exception.

Some readers may be wondering at this point whether it is really proper for a member of the legislature to use his influence in this more direct sense of "representing the people." *Should* he intercede with the Highway Department on behalf of Farmer Brown—or with the Board of Health on behalf of Widow Green or with the Employment Security Division on behalf of Worker White?

The answer seems to us to be clearly "yes"—though with certain important reservations concerning the legislator's personal financial interest in such cases. We seriously doubt, for example, that the public interest could be truly and impartially served if our imaginary Senator Jones undertook to help a constituent on the understanding that he would receive a fat "kickback" for his services. But the line between propriety and impropriety in political transactions is exceedingly difficult to draw (would the "kickback" be less unsavory if it took the form of a campaign contribution or, rather than money, the guarantee of a couple of dozen votes?). And in any event, we believe that the positive benefits of direct personal representation of the citizen's interest greatly outweigh the abuses that flow from such a system.

The main justification is this. Government grows more and more complex each year as it responds to an ever-increasing variety of social needs. Add to this the fact of a rapidly expanding population and consequently a larger and larger number of individual problems in connection with government services. But almost all laws are written to deal with general conditions, not individual problems, and to that extent may work hardships upon particular persons which were never intended, or even thought of, by those who wrote the law or issued the regulation.

Citizens who find themselves in this situation often have only the haziest idea of whom they must see or what they must do to correct what may well be a real injustice. There is always, of course, the possibility of an appeal to the courts, but this can become a very expensive and time-consuming operation. And in a great many cases, what is needed is not a legal remedy—a change in the law—but rather a simple administrative ruling. It is here that the citizen's elected representative can serve a useful and legitimate purpose by using his status in, and knowledge of, state government to bring the problem to the attention of the proper official.

There are other types of cases—some involving whole communities. But all center on the fact that, in the administration of laws enacted by the General Assembly, administrators frequently have broad powers of discretion; they are free to make decisions as to what to do and when, based on their own best judgment. To go back to our original illustration of Farmer Brown's desire to have a nearby stretch of state road re-surfaced, it is worth noting that the General Assembly merely sets the formula which determines how much money shall be available in any given year for highway maintenance and construction; it does *not* specify which new road is to be built or which old road re-surfaced. Those decisions rest with the Highway Commission and the Governor.

Now, not all new roads can be built at once nor all old roads re-surfaced simultaneously. Some order of priority has to be established, and in many cases there is little or nothing to choose as between alternative projects. Two roads, A and B, at opposite ends of the state may be equally in need of resurfacing and may carry almost identical traffic loads. How does the Commission decide which to resurface this year and which to postpone until next? One very likely factor could simply be the greater determination on the part of the citizens living along Road A to have the job done this year. They send individual letters and group petitions to the Commission. *And they get their Senator and Representative to intercede.* The Commission could then very properly decide to schedule A ahead of B. It would not seem very plausible to suggest that the Senator and Representative concerned had acted improperly or abused their authority in applying what pressure they could to bring about that decision. They were acting in response to the wishes of the citizens who elected them. They were representing the people.

B. Who are our Legislators?

In accordance with the terms of our state Constitution, the General Assembly consists of two separate chambers—a 100-member House of Representatives and a 50-member Senate. Representatives are elected for two years, Senators for four years. The entire House faces the voters at each general election, but Senate terms are staggered so that only half the seats are at stake in each biennial election.

Before considering the organization and operation of the General Assembly, it would be well to look into the question of who the

people are occupying its 150 places. From what kind of social and economic backgrounds do they come? What special qualifications, if any, do they have?

The most recent comprehensive survey of General Assembly members was made in 1960.* As regards occupation, it was found that lawyers predominate to an amazing degree in the Senate—34% of the members belong to the legal profession, or more than twice as many as are connected with the next most numerous groups (insurance, 16%; farmers, 14%; merchants and industrialists, 14%). Moreover, an historical survey of the 330 persons who have served in the Senate since 1925 reveals that the high percentage of lawyers has remained almost exactly constant—33% as opposed to 17% who have been farmers.

The House of Representatives presents a strikingly different occupational pattern. In 1961 farmers accounted for 21% of the members, lawyers for 19%, merchants and industrialists 18%. And here again the historical consistency is noteworthy. Of the 928 members who served from 1925 through 1959, 211 were lawyers and 211 were farmers—each group accounting for 23% of the House's total membership.

Education is another interesting (and remarkable) characteristic of Hoosier lawmakers. The 1961 Senate had no fewer than 82% of its members with at least some college training, while the House was not far behind with a figure of 73%. By contrast, only 7% of the House and 6% of the Senate had not completed high school. The significance of these figures is heightened and dramatized when we consider that, of the entire Indiana population 25 years of age and over, only 13.7% have attended college and 58.2% have not completed high school.

One other social characteristic of great interest is the annual income of our state legislators. Not a single member of the 1961 Senate had an annual income of less than $5,000, while more than three-fourths (76%) had incomes of over $10,000 a year! Rather less startling are comparable figures for the House of Representatives. Nine percent had incomes less than $5,000 and only 46% earned more than $10,000 a year. But even the more modest incomes of

* Janda, Kenneth, et al., *Legislative Politics in Indiana: A Preliminary Report to the 1961 General Assembly*, Bureau of Government Research, Indiana University, Bloomington.

House members stand in sharp contrast to the Hoosier population as a whole, when in 1960 the median personal income was only $3,075.00 per family.

Taken all in all, the clear indication of these figures is that our state legislators have a marked tendency to be drawn from the predominantly better-off, higher socio-economic segments of the population. But two additional facts need to be kept in mind in this regard. First, there is nothing unusual about the Hoosier situation. In every state and in Congress as well, similar differences exist between members of the legislature and the total population they represent. Throughout America, and in our American history, elected political leaders as a group have been recruited to a disproportionate extent from among the well-to-do.

The second important consideration to keep in mind, however, is this; among Indiana legislators, at least, party differences in occupation, education, and income are for the most part, negligible. To be sure, Hoosier farmers are more likely to enter the General Assembly as Republicans than as Democrats—there are more Republican than Democrat businessmen, more Democrat than Republican workers; and in the legislature, 62% of all Republicans as against 46% of all Democrats have incomes of over $10,000 a year. But other significant differences (education, for instance) are almost nonexistent. And most striking of all—"considering social characteristics alone, greater differences exist between Senators and Representatives, irrespective of party, than between Rpublicans and Democrats."

One final, and very important, point in this connection concerns the markedly unprofessional character of our legislative membership. No Hoosier legislator makes his living from serving in the General Assembly. Salaries, after all, are only $1,800 a year and only a few could be said to make their living from politics in general. While it is certainly true that members in particular occupational groups—lawyers and insurance men primarily—*may* receive additional earnings as a result of their governmental connections and the publicity they get during campaigns, these groups account for barely half the Senate and less than a third of the House; it would surely be unrealistic to suppose that *all* lawyers gain a great number of additional clients during the two months they are away from their home offices.

The two months' session is a key consideration here. Non-professional politicians can afford to serve in the General Assembly precisely because they can expect to have to be away from their regular occupations only 61 days every two years. If, as in many states, the legislature met annually for extended periods of time, few of the men and women who have traditionally been our legislators would have been able to afford the time. Longer and more frequent sessions would necessarily require a membership composed predominantly of professional legislators who would either (a) be paid very high salaries in order to get the quality of persons we want, or (b) receive only modest compensation which, in turn, would have to be supplemented by resorting to practices that most of us would regard as neither healthy nor desirable for the state's political life.

This is not to say that the short biennial session is an unmixed blessing. There are competent students of American state government who insist that, with the ever-increasing complexity of governmental problems, legislatures *should* be staffed largely by well-paid professional lawmakers. Our point, however, is this . . . so long as the people of Indiana do want General Assembly membership to remain essentially non-professional in character, the 61-day-every-other-year session is very likely a necessity. To require much longer or more frequent periods of service would almost certainly eliminate the large majority of non-professional legislators.

C. How the General Assembly is Organized to do its Job.

No group of 100 or even 150 men and women, each with different ideas, different constituent demands, different perceptions of what is good or bad for the people they represent, different personal aims and ambitions can be expected to produce anything but chaos if they try to function in the absence of organization and leadership. This is so obviously true that all of us tend to take legislative organization (the committee system, floor leaders, etc.) for granted, and rarely take into account the equally true fact that the methods of organization and procedure frequently have a good deal to do with the quality of the product which the legislature turns out. It will be well to keep this latter fact in mind as we examine these features of the Indiana General Assembly.

With only a few important Constitutional exceptions, the General Assembly is free to *organize* itself as it collectively sees fit to do.

The Constitution requires that the presiding officer of the Senate be the state's Lieutenant Governor, but of all other officers it says only, "Each House, when assembled, shall choose its own officers. . . ." Floor leaders, clerks, doorkeepers, and even the committee system itself are nowhere mentioned. This is not as surprising as it may at first seem, because, after all, Indiana's present Constitution was written after 34 years of statehood experience, and the principles of legislative organization were perfectly well understood.

Present practice has the Senate electing a President Pro Tempore (who actually functions as majority floor leader) Principal Secretary, Principal Doorkeeper, and Postmaster. The House elects its Speaker, Chief Clerk, Assistant Clerk, Doorkeeper, and Postmaster. In all cases, the actual choice rests with the majority party leadership in each house.

Despite the partisan basis of their selection, only the Speaker of the House and the President Pro Tem of the Senate function in a partisan capacity, and only they are actual members of their respective chambers. The clerks, doorkeepers, and postmasters are chosen from outside the membership of the two houses, have no voting or speaking privileges, and perform in an entirely non-partisan way their housekeeping and clerical duties.

Different from either of these two groups is the position of the Lieutenant Governor in his capacity as presiding officer (President) of the Senate. He is, of course, an important member of one or the other of the two parties and as such he is expected to, and does, attempt to help his own party within the limits set by the rules of the Senate. But he is not, in fact, a *member* of the Senate—hence he cannot take part in debates and is permitted to vote only in order to break a tie. Much the greatest part of his work in the Senate consists of the routine tasks of any presiding officer—recognizing members to speak, receiving messages from the House or Governor, signing bills which have been passed, convening and recessing the Senate, and other various duties.

The partisan (and sometimes highly controversial) part of his assignment comes when he has to cast a tie-breaking vote or rule on a point of order. Party feelings on such occasions are liable to run hot, and more than one Lieutenant Governor has had to listen to bitter accusations alleging the unfairness of a particular ruling. Needless to say, instances of this sort tend to increase in

direct proportion to the closeness of party divisions in the Senate—especially when the presiding officer is not of the same party as the majority.

One other job of major consequence falls to the Lieutenant Governor when his own party is in the majority in the Senate; he appoints all members of all committees (almost always, however, in consultation with other leaders of both parties). But when his party is not in the majority, effective appointment of committee members lies with the President Pro Tem, whose selections are then formalized by Senate vote. We shall return to the important subject of committee assignments following discussion of other leadership positions.

Though not mentioned in the Constitution, the most powerful member of the Senate is almost always the President Pro Tem, who, as we have said, is nominally an officer of the entire Senate but in actuality performs the functions of majority leader. His power derives from a very simple fact—his party holds more seats in the Senate than the other party. And as the elected leader of his own (majority) party, he can normally expect the entire membership on his side of the aisle to support him on all procedural matters like committee assignments, motions to adjourn, and parliamentary maneuvers of various kinds.

Moreover, the President Pro Tem is the official spokesman of his party in the Senate. It is he around whom the representatives of press, radio, and television gather for policy statements in moments of drama or crisis. It is he who must be consulted by other leaders of both parties (including the Governor) on every major policy issue that comes before the Senate. And it is he who carries the partisan fight to the opposition day after day on the Senate floor.

Other Senate Party Leaders

The Senator whose power and influence will ordinarily most nearly approximate that of the President Pro Tem is the Minority Floor Leader. Unlike his majority counterpart, he is not an officer of the Senate as a whole and has no *formal* powers. He is elected by the members of his own party and is responsible only to them. Having no procedural rules upon which to build influence, he must fashion as much as he can out of the materials of his own character, intellect, and persuasive skills. The only substantial assistance that

he gets from the position itself derives from the long tradition of being consulted by majority party leaders on such procedural matters as committee assignments, recess, adjournments, etc. But he can only advise and urge in matters of this kind; Hoosier tradition does *not* require (as it does, for instance, in the U. S. Congress) that minority wishes must be respected on, say, minority committee assignments.

In addition to their floor leaders each party has a Caucus Chairman. The one obvious job that these men have is to preside over the innumerable party caucuses (meetings) that take place throughout the session, sometimes as often as four or five a day, in rooms set apart for that purpose near the Senate chamber. But the Caucus Chairman will usually also serve in the more important capacity as his party's chief "Whip"—that is, the man responsible for keeping party members in line on important votes, for redressing individual grievances, soothing hurt feelings, in general "keeping his ear to the ground" for sounds of trouble that might develop among the members in regard to stated party policy. A good Caucus Chairman can hardly be less gifted than the official Leader. To do his job well, he must have very substantial qualities of tact, patience, insight, legislative know-how, and (not least) be able and willing to familiarize himself with the contents of practically every bill that reaches the floor of the Senate for debate.

Leadership in the House

The most powerful single leader in either chamber is the Speaker of the House of Representatives.

As we noted earlier, the Speaker, like the President Pro Tem of the Senate, is formally elected by the entire House, but in fact he is chosen by the majority party prior to the opening of the session, and this choice is, in effect, ratified by the whole House on a straight party-line vote.

In addition to all the normal powers of a presiding officer—recognizing would-be debaters, assigning bills to committee, ruling on points of order, declaring the voting machines open or closed, etc.—he has certain other major powers not held by, say the President of the Senate or even by that potent figure, the Speaker of the House in the U. S. Congress. In ascending order of importance these are: the final say on convening, recessing, and adjourning the House; appointment of *all* committee members and chairmen; and—most

extraordinarily—the exclusive right to determine when and whether a bill will come before the House for consideration. This means nothing less than that the Speaker may, for whatever reason, "kill" any bill he wishes by the simple expedient of not including it on the agenda, over which he has complete control. And while no Speaker is likely to abuse this immense power for trivial or irresponsible reasons, it is easy to see why members of both parties find it highly advantageous to stay in the good graces of "Mr. Speaker."

Another aspect of the Speaker's position is that he, like the President Pro Tem, is the chief spokesman for his (majority) party. Though, to be sure, he shares leadership functions with a Majority Floor Leader, the Speaker is incomparably the more powerful of the two as an officer of the House and is thus far more influential in the shaping of party policy.

Each party in the House has a Floor Leader and a Caucus Chairman. Except that the Majority Leader is overshadowed in influence by the Speaker, all these officials perform functions very similar to those of their opposite numbers in the Senate. One obvious general difference, however, is that the House has twice as many members as the Senate; hence firm leadership is to that extent both more necessary and more difficult if party lines are to hold on major issues.

The Committee System

One further major element in the organization of the General Assembly is its network of standing committees, to which all bills must be submitted after being introduced ("first reading"). There are now 29 such committees in each house, and each committee has a particular subject-matter with which it is concerned . . . for example, Agriculture, Labor, Legislative Apportionment, Public Health, Welfare and Social Security are the names (and subject-matters) of some of the Senate's standing committees.

The number of members on each committee is determined by the rules of the respective houses, but the partisan composition—how many members from either party—is largely a matter of discretion for the majority leadership. It is accepted practice for the majority to accord itself an approximately two-to-one edge on most committees, and in certain exceptional circumstances to exclude the minority altogether. The justification for these practices is that the committee

stage of a bill's consideration is so crucial; the majority has to be able to guard against any possibility that the minority might sabotage an important piece of legislation at a time when, say, one or two majority committee members are absent. A comfortable edge in membership, it is said, is the only way to insure against such maneuvers.

How then can majority abuse of its power to "pack" most committees be prevented? Doubtless the most effective safeguard is simply the majority's recognition that, in the next General Assembly, it might well find the electoral tables turned and itself in the minority. The operative consideration here might well be: "Do not do unto the minority what you don't want them to do to you after the next election." Such unwritten rules of common sense play a larger part in American politics than we sometimes realize.

As we have already seen, the majority party's leaders also determine *who* the members of each committee shall be and who shall serve as chairman of each. This practice is in marked contrast to that of the U. S. Congress in three respects: (1) in Congress the majority and minority both fill only the vacancies that occur from one session to the next; committee membership remains highly stable year after year; (2) the minority is entirely free to make its own choices as to which of its members will occupy vacancies on which committees; and (3) committee chairman are "selected" by the impersonal, automatic process called *seniority,* which simply means that the chairman *will always be that member of the majority party who has had the longest continuous service on that committee.* Party leaders are, by long and firm tradition, prohibited from interfering with the operation of that rule.

So long, then, as the same party retains control in either house of Congress, committee chairmanships will show a high degree of continuity. This is not the case, however, in Indiana's General Assembly where a substantial turnover of chairmanships occurs each session—even when party control remains unchanged. Take, for example, the 92nd and 93rd General Assemblies (1961, 1963). Republicans controlled the House of Representatives in both sessions and the same man served as Speaker in both. Yet out of 28 committees, only eight had the same chairman in 1963 as in 1961—a turnover of 71.4%. Contrast this with the relevant figure for the U. S. House of Representatives—in 1961 and 1963, 18 of the 20 standing com-

mittees had the same chairman in both sessions—a turnover of only 10%.

One important reason for this difference, of course, is the seniority system, which in Indiana as in most states is of little or no importance in the selection of committee chairmen. General Assembly members sometimes attain chairmanships in their very first session, and a chairmanship in one's second session is quite common. A more direct cause of high turnover of committee chairmanships is the high rate of turnover that occurs in the total membership of the Assembly from session to session. State legislators have much shorter lengths of legislative service than do U. S. Congressmen. The effect of short tenure on committee chairmanships becomes obvious when we note that of the 20 Indiana House committee chairmen in 1961 who did not return to the same post in 1963, *seven* simply were no longer members in the latter session. Taking into account all 28 chairmen in 1961, this means that fully one-fourth of that group did not return to the General Assembly two years later. By contrast, only 10% of U. S. House committee chairmen in 1961 failed to return to Congress in 1963.

Two other factors causing high turnover in chairmanships deserve mention. The first is elevation to a leadership position. Two of the 1961 chairmen were elected by their party in 1963 to the posts of Majority Floor Leader and Majority Caucus Chairman. The other factor is what has sometimes been called (perhaps unkindly) "musical chairs,"—a practice which has a committee chairman in one session move to the chairmanship of a different committee in the next. This factor accounted for no fewer than *nine* new chairmen between 1961 and 1963!

By way of summary, then, an account of what happened two years later to the 28 House committee chairmen of 1961 looks like this: nine moved to the chairmanships of different committees; eight stayed in the same post; seven failed to return to the General Assembly; two were elevated to leadership positions; and the final two returned to the House, but, for reasons not known, did not receive chairmanship assignments.

The importance of all these organizational features we have been discussing will become evident when we turn to a look at the General Assembly in action.

Staff Aids to the General Assembly

All legislative bodies require assistance. Except in unusual circumstances no legislator is anything more than an amateur in terms of his lawmaking function. Although this situation helps to maintain the reality of our "government by the people" arrangement, it creates real problems when the legislature is called upon to deal with the extremely complicated problems that confront it at every session. The fact that the legislative amateurs are frequently considering problems which the experienced professionals of the executive agencies deal with on a full-time basis helps explain, incidentally, the factors which have led to a shift toward executive dominance of America's governments in recent decades.

In Indiana, the need for assistance which characterizes all legislatures is increased substantially by the fact that the General Assembly meets for only two months every two years. It is improbable that any 150 people, even if they were experienced professionals, could diagnose the needs of the state and prescribe appropriate statutory action in a period of 61 days every two years without help, and when the General Assembly consists of amateurs almost half of whom were first elected to the office only two months previously and have never had legislative experience, the need for legislative assistance is critical.

Legislators need help of at least three kinds. First, most members of the General Assembly receive enough requests, complaints, and other communications from constituents during the session to make answering them without secretarial assistance a serious burden. Secondly, if a legislator has an idea as to an action he believes the state should take, he does not normally have the special skill necessary to draft a proposed statute which will accomplish his end. Thirdly, and most importantly, the members of the General Assembly lack the time during the 61 day session and frequently lack the experience to conduct first-hand investigations of state problems on the basis of which the desirability of alternative courses of legislative action can be evaluated.

Secretarial assistance to the Indiana legislature has been kept at a modest level. Eight or ten stenographers are employed to assist the members of each house during the session. This provides members with help on such matters as committee business, but does not provide for more than a minor part of the correspondence with

constituents. The majority and minority leaders of each chamber do have small offices, but other members typically handle their correspondence in their hotel rooms, at their desks on the floor of the House or Senate or else after they get back to their home towns. It would not be reasonable to have 150 offices sitting empty for the 22 out of 24 months of a biennium that the General Assembly is not in session and most legislators would not keep a secretary busy full time even during the session, but the effectiveness of the legislature would certainly be increased if working conditions and secretarial services for the members were improved somewhat from their present level.

Legislators who know what they want a law to accomplish can have the actual drafting done by the Legislative Bureau. This office, the director of which is appointed by the Governor to a four year term, also provides a legislative reference library and will provide legislators with factual information concerning problems with which the General Assembly is confronted.

The most important staff aid to Indiana's legislature and the one device which has made it feasible for the state to continue with only two months of legislative session every two years is the Legislative Advisory Commission. This body, which was established in 1945, is a sixteen-member bipartisan group. Its membership includes the Lieutenant Governor, who serves as chairman, seven senators whom he appoints, the Speaker of the House and seven representatives he appoints. The members of this Commission, known generally as the L.A.C., study a variety of problems during the period between sessions and prepare detailed reports which are ready for consideration by the members of the new legislature when it convenes. The Commission's staff has expanded in recent years and the members are now assisted by as many as thirty people. Many of these L.A.C. aides are "interns" who are supplementing their graduate work in law, political science or journalism, with this work experience which gives them a unique opportunity to observe and study the problems of state government from the inside.

Many of the Commission's studies are undertaken at the express direction of the Legislature, which may specify that the study of a problem be carried out either by an all-legislator group or by a special commission including some legislators and some outsiders. Of the

31 reports submitted by the L.A.C. to the 1965 General Assembly, for instance, 24 were undertaken in response to Joint Resolutions adopted by the 1963 Legislature. The remaining 7 reports dealt with matters which the L.A.C. members themselves decided warranted study.

The effectiveness of L.A.C. recommendations varies from session to session. In 1963, 85% of the Commission's proposals were adopted in essentially the form they were submitted, but this was an unusually high proportion. In 1965, when there had been a major shift in the composition of the General Assembly and several members of the L.A.C. had themselves failed of reelection, the acceptance rate for Commission recommendations was well below that of two years before. It is important to recognize, however, that most of the usefulness of the L.A.C. comes in the detailed studies which it conducts rather than its specific proposals for action. Even if the orientation of the Legislature is such that the L.A.C. proposals for action are not accepted, the existence of the Commission's report means that the Legislature has far more information on which to base its decision than would be the case if the General Assembly had been forced to begin a fresh consideration of the problem after the beginning of the session.

This stress on the importance of the Legislative Advisory Commission is justified despite the fact that there are many people who would be happy to "assist" the legislature in its work even if the General Assembly had made no arrangements for staff aids. Every office of the Executive branch is likely to have several ideas as to how existing laws should be amended or new laws should be enacted. Every representative of an interest group is eager to explain how his constituents believe some laws should be changed and others should be preserved without amendment. The problem is that if the legislators were to rely solely on this advice from outside, they would become pieces on someone else's chess board. The perspectives of the lobbyists and, to a lesser extent, the Executive branch officials are inevitably different from those of the legislators. If two interests are working on a problem in opposite directions, the legislators may be able to evaluate the two arguments and choose between them, but even this is an unsatisfactory way to determine the needs of the state. And when the only pressures from lobbyists are exerted in one direction,

the legislature may be completely unequipped to separate justifiable calls for action from unfounded special pleading.

This does not mean that lobbyists do not make major contributions to the work of the General Assembly. As spokesmen for various interests in the state, they play an invaluable role as channels for communication between legislators and their constituents. Many lobbyists are able and willing to draft proposed statutes dealing with problems in their area of concern and several interest groups in the state conduct objective research programs which are of great help to the Legislature. No lobbyist who expects to stay in business attempts to circulate falsehoods, but, on the other hand, he does not normally call attention to those portions of the truth which raise doubts about the desirability of the actions which are desired by the interests he represents. The crucial role of the Legislature's own staff arms is to turn the light on those corners where the lobbyists have no incentive to focus it.

D. The General Assembly in Action

The main job of the General Assembly when in session is to make laws—and the phrase "make laws" includes, of course, repealing or revising old laws as well as creating new ones—also such quasi-lawmaking activities as setting up study commissions, proposing constitutional amendments, authorizing certain kinds of state cooperation with national authorities, etc. . . . all of which are accomplished through joint or concurrent resolutions rather than through Acts.

Much the largest part of the Assembly's time is taken up, therefore, with elements of the lawmaking process which we shall look at in some detail in this section. But it is important not to lose sight of the fact that the state legislature is also a major forum for the expressing of opinions on all sorts of subjects, not only by the legislators themselves but by the Governor and by representatives of interest groups as well. Nor is this opinion-expressing function merely an annoying sideshow to the "proper" business of lawmaking. When we recall that the men who established our system of government conceived of the legislature as the place where the voice of the people was to be heard in its politically most meaningful expression, we realize that the total system would indeed be severely distorted if the legislature were forced to confine its activities solely to lawmaking.

So it is that the Governor in his "state of the state" message to the General Assembly will always do more than just recite a catalogue of the laws he would like to see enacted. So it is that interest group spokesmen, testifying at committee hearings on a particular bill, will frequently express convictions on general matters of public policy. And so it is that members of the General Assembly itself will go before their colleagues "on a point of personal privilege" to speak about anything at all in the realm of political concern.

One other point needs to be made in connection with the legislature's opinion-expressing function. In the preceding paragraphs we have talked about certain individuals—legislators, lobbyists, the Governor—using the General Assembly as a forum for expressing their opinions. But the General Assembly itself, as a collective body, can also "express an opinion" through the medium of the concurrent resolution. Consider, for example, the now famous "anti-Federal-aid" resolution passed by the 1947 General Assembly (later a campaign issue in the 1960 gubernatorial election):

> We are fed up with subsidies, doles and paternalism. We are no one's stepchild. We have grown up. We serve notice that we will resist Washington, D.C., adopting us.
>
> *Be it resolved by the House of Representatives of the General Assembly of the State of Indiana (the Senate concurring),* That we respectfully petition and urge Indiana Congressmen and Senators to vote to fetch our county courthouses and city halls back from Pennsylvania Avenue. We want government to come home.
>
> *Resolved further,* That we call upon legislatures of our sister states and on good citizens everywhere who believe in the basic principles of Lincoln and Jefferson to join with us, and we with them, to restore the American Republic and our 48 states to the foundations built by our fathers.

It should be noted that this resolution required no one to do anything. It merely gave formal expression to the opinion of a majority of the members of that General Assembly in regard to Federal-state relations. Similar resolutions, including the one adopted in 1961 which endorsed Federal aid for flood control and resource development, accomplish as much as (or as little as) did that of 1947. These resolutions need not be signed by the Governor nor can he veto them. They have no legal force.

Let us see now how laws are made in the General Assembly. It will be helpful to list the stages of the potential law's progress in outline form, then examine each stage in a little more detail so as to understand which are purely formal and which are crucial to final enactment:

1. Introduction of bill by title ("first reading")
2. Assignment by presiding officer to committee
3. Consideration in committee
4. Committee report to house
5. Acceptance of committee report
6. "Second reading"—floor debate and introduction of amendments
7. "Third reading"—floor debate and final passage

Following these seven steps in the chamber where it was introduced, the bill is then sent to the other chamber where it goes through the same seven steps. *If* it is passed by the second chamber in identical form, without so much as even a comma being changed, it is signed by the presiding officers of both houses and sent to the Governor for his acceptance or rejection. (For discussion of the Governor's veto power, see Ch. 4). But if, as is more likely, it is returned to the house of origin, the changes can either be accepted and the bill signed and sent to the Governor, or the changes rejected and the bill sent to a conference committee composed of an equal number of members from each house designated by their respective presiding officers.

The conference committee can either (a) fail to reach agreement on a common text and ask to be discharged, or (b) agree to a common text and submit it to the two houses in the form of a "report." The report must then be accepted *without amendment* by both houses, whereupon this final text is signed by the two presiding officers and sent downstairs to the Governor. Two other points in regard to conference committees should be noted at this time. First, if a conference committee fails to reach agreement and asks to be discharged, the presiding officers can appoint a new committee in its place; there is no *legal* limit to how many times this can be done. But there is a severe practical limit in the fact of the relatively short (61-day) duration of the entire session. In most cases, if agreement is not reached quickly the session will come to an end, and all unenacted bills die with the fall of the final gavel.

The second, and perhaps more important, point about conference committees has to do with the way their reports are adopted by the two houses. The Indiana Constitution requires that all bills be voted upon by roll-call on final passage and they must be approved by an *absolute majority* in each house—26 yea votes in the Senate, 51 yea votes in the House. Bills which receive only a *simple majority* (for instance, 24 to 22 in the Senate) fail to pass. Conference committee reports, however, enjoy the peculiar advantage of not being subject to those Constitutional stipulations and can thus be accepted by each house on a non-roll-call, simple majority vote. The very real practical importance of this special status for conference committee reports was most dramatically illustrated in 1963 on the climactic Senate vote to accept the conference committee report which levied Indiana's first sales tax. The report was accepted by a vote of 25 to 24—which, as we have seen, would have been insufficient to pass the measure if it had come before the Senate as an ordinary bill on third reading.

One other maneuver—sometimes of crucial importance—by which the same Constitutional requirement can be circumvented is the vote to accept amendments proposed by the other house. The point here is that a bill passed by one house can be so drastically amended in the other as to make it virtually a new bill. It then comes back to the house of origin for a vote on whether or not to concur in these amendments, and the vote to concur needs only a simple majority—which in the Senate can be as few as 18, in the House as few as 34. More than one major piece of legislation has found its way into the statute books in this fashion.

Let us go back now to look a little more closely at the seven steps by which a bill proceeds from birth to passage in either house:

1. Introduction of bill. This is purely formal; a bill needs only to be prepared in physically acceptable style, sponsored by at least one member, submitted to the Clerk for numbering in order to receive its so-called First Reading.

2. Assignment to committee. After the reading clerk has read aloud the title of the bill (for example: "A bill for an act concerning hospital and hospital staff medical records information and data"), the presiding officer assigns it to the appropriate subject-matter committee (the example cited was referred to the Committee on Public Health). Though this step is usually perfectly routine, sometimes

the subject of a bill cuts across more than one policy area and so might be assigned to one of several different committees. In these cases, the presiding officer will probably consult with his parliamentarian (a member of his personal staff, paid out of General Assembly funds) and make his decision on grounds that are not always obvious to the observer.

3. Consideration in committee. In the U. S. Congress, this is usually the most important stage of all, in the General Assembly, rather less so. Here is where the bill is likely to receive its most searching examination. Most committees include members who are either experts or otherwise especially interested in the subject matter that falls within the committee's sphere of influence. For that reason they are likely to have or to develop strong feelings pro or con the bill under consideration. And the committee as a whole is free to make as many, and as drastic, changes as it likes in the text of the bill (but not in the title, which remains unchanged).

The committee will thus give the bill consideration, sometimes hold public hearings on it, write in whatever amendments it wishes from the most trivial to the most sweeping, and then, with the approval of a majority of that committee, report it back to the full house with a recommendation that it "do pass as amended."

5. Acceptance of committee report. This is almost always a purely formal step even when the committee's changes, if any, are controversial. The reason for this is that the committee report *has* to be accepted in order for the bill to reach "second reading"—at which time the text is open to amendment from the floor.

6. Second reading. At this point the committee text of the bill has been printed and distributed to all members. Two days after this has been done, the bill is eligible for second reading. In the Senate the roll is called and each Senator may "call down" one (and only one) such bill each day. Any Senator may now offer amendments, which are debated and voted upon. Those that win a simple majority are printed and attached to the text which each member already has. When all proposed amendments have been disposed of one way or another, the bill becomes eligible for third reading one day after members have received printed copies of the amendments.

House procedure differs markedly in two respects: (a) only one day instead of two has to elapse between the time members receive

copies of the committee report and the time the bill becomes eligible for second reading; (b) more important, as we have already noted, only the Speaker can "hand down" a bill for second reading; it cannot, as in the Senate, be called down by any individual member.

7. Third reading. The procedural difference between "handing down" and "calling down" occurs at this stage as well. But whichever the case, once the bill reaches the floor its sponsor is asked to step forward and explain why he would like this proposal enacted into law. Then supporters and opponents of the bill are given a limited amount of time (five minutes or less) to present their views, but no one except the sponsor can speak more than once on each bill. To close the debate, the sponsor is allowed to respond as he wishes for another five minutes. The question is then put and the bill will pass if it receives 26 or more affirmative votes in the Senate, 51 or more affirmative votes in the House (an *absolute majority* of each chamber). Having been duly passed, it is certified by the clerk and sent on to the other house to begin the same process anew.

One final aspect of legislative procedure that merits attention is the numerous ways in which a bill can be *prevented* from becoming law. These can be summarized briefly as follows:

1. Adverse committee action which is not overruled by the full house.
2. Various motions during second reading which have the effect of killing the bill, such as motions to strike out the enacting clause, recommit to committee, lay on the table, or postpone consideration indefinitely.
3. Adverse vote or lack of an absolute majority on third reading.
4. Failure to reach passage vote anywhere along the line in the second house.
5. Failure of the conference committee to reach a compromise agreement.
6. Veto by the Governor.

When both houses have agreed on an identical text of a bill, it passes through several minor technical steps and is transmitted to the Governor as an *enrolled act.* This will become law if he (a) signs it, (b) takes no action within three days after receiving it, unless the session is less than three days from adjournment, or (c) vetoes it and both houses pass it over his veto by an absolute majority of

each. The way a Governor vetoes an act is to send it to the Secretary of State with a message declaring his objections to it. The Secretary of State must then return the act and the Governor's veto message to the house of origin, where a vote is taken on whether or not to override the veto. If the veto is overridden there, the act moves on to the second house for similar trial. Lack of an absolute majority in either means that the Governor's veto is upheld.

The foregoing pages present an account of the way the General Assembly goes about its main business of making law for the state. One final question in this connection that many readers might find of interest is this: What proportion of the total number of bills introduced actually succeed in traversing the rocky road to enactment? A recent study provides an answer for the seven General Assemblies from 1949 to 1961 inclusive, and the percentage similarities from session to session indicate that a study of other years would very likely yield the same results.

Here are the figures: from 1949 through 1961 a total of 6,422 bills were introduced. Of these, 2,489 passed both houses and became law—38.8%; 888 bills passed one house but not the other—13.8%; and 3,045 bills never got out of their house of origin—47.4%. The most successful bill-passing year was 1951 when slightly over 43% of bills introduced became law, and the toughest year for getting a bill through was 1953 when only 34.7% finished the course. Comparable figures for other states are, so far as we have been able to learn, unavailable.

Legislators and Constituents

At the beginning of this chapter we talked in general terms about the ways in which members of the General Assembly represent the people of Indiana. We saw that the member may represent his constituents when (a) he acts as an intermediary between one or more persons in his district and the executive branch of government, (b) he votes a certain way during the session on behalf of a particular interest in his district, and (c) he participates in legislative decision-making on matters of no special concern to any of his own constituents but which must be decided for the state as a whole.

To conclude the present chapter we want to examine more closely the kind of relations that are involved in (a) and (b).

The question can be put like this: how does an individual or group interest within a district make itself felt? Or, put another way: what determines how a legislator will vote or otherwise take part in the making of decisions that excite controversy among the voters in his district?

First let us make it perfectly clear that there is no firm, assured answer to either of these questions. So far as the best present-day research can discover, a number of different factors seem to enter into almost every voting decision that a legislator makes, and it is highly probable that not even the legislator himself could give us an objectively accurate answer as to what determined his own behavior in a particular instance. But we can begin to get a useful idea of what is involved by looking at the four general categories of factors that enter into the making of almost every decision by an individual member. These are:

1. The legislator's own beliefs, values, convictions
2. Party pressures
3. Constituency demands
4. Availability of information

(1) It would be the worst kind of mistake to think of a member of the General Assembly as a kind of computer into which certain pressures are fed and out of which a predictable response pops. This would be a silly and superficial view if for no other reason than the fact that every human being determines for himself to an important extent what is and is not "pressure." The very same words that sound like ugly pressure to one legislator may sound like friendly advice to another. If this seems unlikely to you, consider the following dialogue between Senator Jones and Banker Blue:

JONES: We'll be voting on that increase in the intangibles tax next week.

BLUE: Senator, if that increase goes through, we'll just have to call in a lot of our short-term loans.

JONES: Hmmm. My brother has one of those loans with you now, doesn't he?

BLUE: He sure does. And I hate to think what'll happen to his new store if we have to call in the loan or refuse to renew it.

Now, were Banker Blue's remarks ugly pressure or friendly advice? Which do you think Senator Jones would consider them? What would

your answer be if we told you that Jones and Blue are close friends and political allies? What if they dislike each other personally and belong to different parties? In either case, are you *really* sure you know what interpretation Jones would place upon Blue's words?

Pressure can, of course, be perfectly obvious when it takes the form of open threats, offers of bribes, pounding on the table, weeping and groaning, and so on, as can truly friendly advice when presented in the proper circumstances. But it is nevertheless true that much of what passes between a legislator and his constituents has to be interpreted subjectively by the former—which is simply another way of saying that he "determines for himself to an important extent what is and is not 'pressure.' "

The more important reason why our legislators are a great deal more than merely pressure-computing machines is that they, like all of us, have their own beliefs and convictions about public policy and values which they hold on to with greater or lesser degrees of intensity. These beliefs, convictions, and values inevitably enter into a lawmaker's political behavior as indeed they do for all the rest of us in our own special fields of interest. And while any person in public life (as well as private) finds it necessary from time to time to act contrary to his own beliefs and values, it is still perfectly true to say that *most* legislators act in accordance with, rather than contrary to, their beliefs and values *most* of the time.

(2) Party pressure is the second major influence upon a member's activities in the General Assembly. By using the word "pressure," we mean to indicate those influences apart from the normal tendency for a Democrat to take a Democratic position and a Republican to take a Republican position on issues that come before the legislature. For although this normal tendency to support one's own party will generally lead to a high degree of solidarity on both sides of the aisle, the goal of the party itself as expressed through the leaders is always to strive for 100% cohesion among its members.

One reason for this is that each party wants to "make a record" in the General Assembly which it believes will appeal to the voters at the next election. And it would not make much sense for the Democratic party to say "we" supported something or other if in fact, say, 40% of the Democrats in the legislature voted against it, nor would it make sense for the Republican party to claim it had

opposed something or other if in fact 40% of the Republican members had voted for it.

Another, equally important reason is that the parties do, after all, take positions on many public issues of statewide concern—positions to which there is a genuine commitment on the part of a large majority of their active supporters. The party leaders want their policies to prevail, not only for the sake of the record but because they deeply believe that their policies are the best for Indiana. Now in some sessions of the General Assembly, the leaders of the majority need have no great fear that their policies will be defeated; they have enough seats in both houses so that some of their own people can vote against them without endangering the passage of a bill.

But the situation of comfortable majorities in both houses is becoming increasingly exceptional in Indiana; close division in at least one house is becoming more and more the rule. Consider the last five General Assemblies. In 1957 the Republicans had big majorities in both houses; in 1965 the Democrats enjoyed that happy state of affairs. But in 1959, 1961, and 1963 party divisions in the Senate were so close that a switch of only one or two votes made the difference between passage and failure of major legislation. Under those circumstances, then, party leaders can hardly afford to rely on "normal tendencies" alone. They must do all they can to ensure that every member votes with the party no matter what his personal inclinations might be. Hence the need for party *pressure.*

What forms do such pressures take? Far and away the most common and the most effective form is persuasion. One or more party leaders will simply talk to the doubtful member and attempt to convince him, through appeals to reason and loyalty, to go along with his fellow party members. Often, too, the leaders may work through another member known to be a trusted friend of the one they are trying to convince. And in cases where the Governor is of the same party, a friendly chat with the state's highest official in his great office can be extremely effective. A final source of low-pressure persuasion can be party leaders back home, especially the county chairman, who will usually base his appeal on considerations of loyalty.

Beyond appeals to reason and loyalty, party leaders have means of applying pressure to an individual member of the General Assembly that range the whole gamut from justifiable "arm-twisting" to prac-

tices just short of outright bribery. A good example of the former is the threat, issued through and with the cooperation of the county chairman, to defeat him for renomination at the next primary election. Since, as we have seen, party organization is usually the single most important factor in determining the outcome of a primary battle, the legislator who wants to return to the General Assembly after the next election will probably think long and hard before deciding to "buck" the party on an important vote—provided, of course, that the county chairman is willing to cooperate with the state leaders in making that kind of threat against his local Representative or Senator.

The cooperation of the county chairman is, in turn, dependent upon a number of factors such as his own relations with state party leaders, the personal popularity of the legislator within the district, and general patronage considerations. These are all factors that can be calculated only with difficulty. But in any case, threats of this sort are used only as a last resort and should certainly be regarded as very exceptional.

So, too, with what we have called "practices just short of outright bribery." It is true that various kinds of patronage (jobs, contracts, special favors of every description) may sometimes be offered a reluctant legislator to get him to vote with the party on an important issue. But close observation of the General Assembly would convince the impartial student that such practices are to be found far more frequently in cheap novels and television scripts than in real-life legislative behavior.

We should not leave the subject of party pressures on legislators without calling attention to the very important fact that only a small percentage of the bills that come before the General Assembly divide the members along party lines; much the larger portion of legislative proposals are simply non-partisan in character. Indeed, it is doubtful whether as many as 5% of all roll-call votes in either house actually produce a partisan response among the members. And while those few bills that do create party-line divisions are usually (but not always) proposals of great importance for the people of Indiana as a whole, others of equal importance often pass with near-unanimous approval and still others evoke bitter controversy that is in no way related to party affiliation.

(3) Constituents' demands are perhaps the most difficult to deal with of the many influences that come to bear upon a legislator's decision-making. This is because the legislator himself is so often puzzled as to who really wants what and how badly they want it and who, moreover, will be offended and whose interests harmed if the member sponsors or votes for the requested piece of legislation and helps push it through to passage.

The point here is that, while the member is expected to use his own best judgment concerning most of the several hundred bills that come to a vote in each session, he is also very much a *representative* of the people of his district on matters of direct "bread-and-butter" concern to different, often conflicting, groups of them. This means that the General Assembly member sometimes has to weigh in the balance *at least* this many factors in making up his mind how to vote: (a) what he himself thinks about the bill; (b) what the party wants in regard to it; (c) the strength, in numbers and determination, of the forces in his home district interested in seeing it either passed or defeated; (d) potential support for and opposition to the bill *after he has cast his vote and gone on record.*

It may be worth emphasizing here again that there will ordinarily be only a few bills in each session that require the weighing of all these factors, but some of those that do may well mean political life or death (or *appear* to) to the member trying to decide how to vote, while a substantial number of others will force the member to take into account all but (b).

Given the member's need to be able to make some rational judgment regarding (c) and (d), what resources are available to him to discover opinion on particular issues within his home district? The four most useful are these: (1) personal conversations with constituents in all walks of life and reports of trusted friends about conversations they have had; (2) statements in various forms from official representatives of interest groups; (3) letters and telegrams; and (4) newspaper editorials.

A personal sounding-out of public opinion in the district is probably the very best means the member has for discovering what his constituents think about a particular proposal. Provided only that he makes a conscious effort to talk to a real cross-section of the public and not just to those in his own neighborhood or club, the legislator can

get far more reliable information than even an expensive Gallup-type poll is likely to give him. This is because personal conversation will allow him not only to hear the "yes," "no" or "maybe," but also to sense the *intensity* with which people approve or disapprove the suggested legislation.

And although it may seem so at first, this is not at all a difficult way for members of the General Assembly to get information. After all, most members spend most weekends at home during the session, and "home" is usually a moderate-sized community where legislators are on first-name terms with a goodly number of people. The barber-shop, the downtown cafe, the neighborhood drugstore, the union hall, grain elevator, church, veterans' clubs, lodges—all these are places where people congregate informally and are usually happy to express their views to their Representative or Senator.

By contrast, the other three sources of information, though sometimes indispensable, are much less representative of general public opinion. This is obviously the case, of course, with statements from official representatives of interest groups who, as we have seen, are concerned about making the best possible case for their particular point of view on an issue. What the legislator hears from, say, the spokesman for the Chamber of Commerce or the local union leader is certainly information that he has to have. But, just as certainly, he would be mistaken in thinking that the voice of the interest group is the voice of the people.

We should bear in mind, however, that a great many bills introduced in the General Assembly are of interest or importance to only a relatively few people in the district. In these cases, the member would quite properly want to learn what those who will be affected by the legislation think about it. But when, as frequently happens, one group strongly favors and another group strongly opposes a certain bill while the general public knows little about it and cares less, the member has to make his decision on the basis of, first, his own evaluation of the bill and second, a pretty tough-minded estimate of the probable political costs and benefits of supporting one group's position against the other's. Whether he chooses to act on the basis of the latter calculation or the former, will, of course, depend on his own character, beliefs, values, and intensity of conviction about the bill itself.

Letters and telegrams from constituents are a third source of information for the member about the state of public opinion—but they are not, in general, a very good source. One reason is that much of the mail a legislator receives on a given issue will be interest group-inspired—that is, a concerned interest group will simply get a number of its members to send practically identical postcards, letters, or telegrams to the legislator (often to several) and this, in effect, accomplishes nothing more than to tell the legislator what he already has learned from the group's official spokesman. On the other hand, mail coming from self-motivated individuals can be as useful as any personal conversation the legislator may have at home. But even when it comes in a very large quantity indeed (which it almost never does), it can only serve as a supplement *to* and not a substitute *for* those personal conversations with a genuine cross-section of the public. It is true, though, that individual letters often carry considerable weight with a member because of what they indicate about the writers' intensity of feelings. With few exceptions, only those who care a great deal about an issue will take the time and trouble to write a letter about it.

Newspaper editorials are, for most members, not as useful or as influential as we may sometimes think. For one thing, not all members have newspapers which carry editorials in their districts. More important, a newspaper's editorial policy is usually well-known in advance and any particular editorial is likely to tell the member nothing he does not already know about the editor's views on that subject. And thirdly, in this connection, while some editors' views may be taken as fairly representative of an identifiable segment of opinion in the community, other editors may come close to speaking for almost no one but themselves—all of which is to say that newspaper editorials are, at best, uncertain barometers of public opinion for the legislator's use.

These, then, are a legislator's sources of information about public opinion. Some are more reliable than others and none is perfect. But even if the member *had* statistically perfect information about opinion among his constituents, he would still carry the burden that our American philosophy of representation places upon him—the burden of having to fall back on his own resources of knowledge, intellect, judgment, and character for finally deciding how to vote on

each of the 400-or-so issues, great and small, that require him to put a "yes" or "no" beside his name.

(4) The quality of a legislator's vote can hardly be better than the quality of the information he possesses concerning the issue at hand. Let's put it another way . . . . if a member votes on the basis of faulty, incorrect, or otherwise inadequate information about the issue itself, his vote is more likely to be "wrong" (in the sense of not achieving what he would like to achieve) than if he were to decide by simply flipping a coin. The latter way of doing it gives him at least a 50-50 chance of being "right" whereas the former will almost certainly *mis*lead him.

The sources and kind of information a legislator receives are, accordingly, crucial factors in the legislative decision-making process. These appear to be the principal sources of information for a member of the General Assembly: (a) personal experience on the subject; (b) other members whom he trusts; (c) lobbyists; (d) interested constituents; (e) the news media and other public information sources; and (f) state agencies.

(a) Many members possess considerable experience of their own within certain areas in which legislation is proposed. For example, we referred previously to "A bill for an act concerning hospital and hospital staff medical records, information and data," introduced in the 1963 Senate by James M. Kirtley (Democrat—Crawfordsville) and sponsored in the House by Otis R. Bowen (Republican—Bremen). It happens that both these men are practicing physicians of long experience in their home communities; neither would have had to go beyond his own intimate familiarity with the matter of hospital medical records to decide that this was a bill worth sponsoring and pushing through to enactment. And members from other occupational groups would be expected to possess similar experience on bills affecting their own areas of competence.

(b) The same hospital records bill offers a good illustration of the way members frequently rely on the experience of their collegues in deciding how to vote. Of the 133 total votes cast on passage (45 in the Senate, 88 in the House), only two were negative (both by lawyer-Senators). The other 131 members quite clearly accepted the judgment of the only two physicians in the General Assembly on the grounds that, if the two expert members thought it was a

good idea and the hospital administrators saw fit not to oppose it from outside, non-expert members ought not to block it.

A somewhat similar process occurs during formal debate on a bill. If the merits of the proposal have not been thoroughly aired during the amendment stage, sponsors have an opportunity on third reading to explain the bill, answer questions, and rebut counter arguments. The non-expert member, having listened to all this and having read the bill himself, can then determine, in effect, whose judgment he wishes to trust—the sponsors' or the opponents'. This is, after all, the function of debate for the member who possesses no experience of his own on the subject, and debate in the Indiana General Assembly, where most members are present for most debates, is a far more effective operation than in, say, the U. S. Congress where genuine debate—argument versus counter argument—is the exception rather than the rule.

Party caucuses afford yet another opportunity for expert members to put their views to non-experts. Frequently, a party member who has a bill in which he is especially interested will use the caucus as a forum for explaining the reasons for his interest and encouraging fellow partisans to support him without really making it a party matter as such (which would bring the leadership to exert the kind of pressures we discussed previously). Other things being equal, it is reasonable to expect that a member who has no particular interest in or experience on a bill will give his support to another member of his own party rather than to one of the opposition.

A final way in which the non-expert member will take his voting cue from an expert colleague is simply in personal conversation. Seeing that a bill about which he has neither knowledge nor interest will be coming to a vote shortly, a member will likely seek out a colleague in whom he has confidence and whom he knows to be fairly expert on the matter. Party lines mean little in such cases; personal confidence counts for everything. This is why the legislator who has the capacity to inspire trust and good-will among his fellow members will enjoy a degree of real legislative power far in excess of anything his formal status in the General Assembly would suggest.

(c) We have already seen how important interest groups, or "lobbies" are to the total political process. Their special significance in the legislative process derives from their capacity for supplying

members with large quantities of very useful information about bills under consideration. The point has been well made by the authors of *Legislative Politics in Indiana:*

> Modern legislators are burdened with the task of deciding public policy for a complex society. Many of the laws which need to be enacted are of a technical nature and affect only certain segments of the society. As a result, the legislator must frequently turn to the authorized spokesmen of established organizations to see how proposed legislation might affect members of the group. Often the legislator seeks information from opposing organizations to get both sides of the issue. In this respect, interest groups form an important part of the legislative process and play a significant role in influencing public policy.*

Two points that might be added are—first, that information obtained from lobbyists is inevitably one-sided and designed to place the lobbyist's own position in the best possible light. But since everybody understands this, the conscientious legislator will often, as suggested in the quotation, try to get information from as many interested lobbyists as possible (but he will not have to try very hard—it's the lobbyist's job to see that he gets it without asking.)

(d) Interested constituents can often provide the legislator with factual information (as opposed to mere opinion) that might be difficult to obtain otherwise. For example, a local restaurant-owner can supply figures from his own account books as to the probable effects of a state minimum wage law. And there is no better way for the member to learn whether certain types of welfare payments are adequate or not than to visit the home of a welfare recipient to see for himself how the family manages on what it gets.

(e) Newspapers, radio and television provide obvious sources of information about matters of public policy for the legislator as well as for the ordinary citizen. They can also provide informed evaluations of complexes of facts which the non-expert member might find difficult to master in the short space of time he has during the crowded session. Here again, the member's confidence in the source is crucial. If he believes himself to have been misled in the past, he is unlikely to place much confidence in that same source in the present.

(f) Agencies of state government constitute the last, and one of the most important, sources of information for the lawmaker.

* Janda, Kenneth, Et. Al., *Legislative Politics in Indiana,* Indiana University Bureau of Government Research, 1960 p. 14.

Virtually every bill that is proposed will either have to be administered by or have some impact upon an existing state agency. Those who will be affected in this way will quite properly want their positions clearly understood, and as favorably as possible, by the General Assembly. Moreover, a great many of the bills proposed actually originate in one or another of the state agencies and are sponsored by friendly members in each house. Hence, it has been customary for department heads and their principal assistants to prepare information hand-outs, testify before committees, and generally to conduct themselves during the session pretty much as representatives of private interest groups do.

We might well conclude this chapter by noting that the Indiana General Assembly has come in for rather more than its share of criticism over the years. When party divisions are close and agreement on major issues difficult to reach, critics assail the legislature for inefficiency. But when one party enjoys large majorities in both houses and pushes through its program expeditiously, critics assail it for "ruthlessness," for the use of "steamroller tactics," or for acting as a "rubber-stamp" for the Governor. These are only two of the kinds of attacks that members must accustom themselves to.

The authors' view, by contrast, is that the General Assembly on the whole does its job remarkably well. If a complete overhaul of the state's tax structure produces, as it did in 1963, long and often bitter controversy, is this not exactly what we should expect when the voters themselves are deeply divided over the need for and methods of tax revision? Or if the voters in overwhelming numbers entrust the affairs of state to one or another of the parties in both the legislature and executive, is it not entirely proper for the victorious party to enact into law the program it campaigned for?

The basic fact is, in a representative democracy such as ours, a large number of diverse but legitimate interests want and need to be heard. And the legislature is—as it was designed to be—the proper forum for the expression of *every* lawful interest. Those who regard this as a weakness in the General Assembly might well begin their argument by stipulating which groups of Hoosiers they wish to exclude from the political arena and which interests they wish to strike down without a hearing. Failing that, our legislature is likely to continue to be a place of frequent argument, occasional uproar, and final healthful compromise.

Chapter Four

THE EXECUTIVE BRANCH: THE GOVERNOR

Students of American state government frequently talk about "strong" and "weak" governors. When they do, however, they are usually not referring to the men who hold the office of governor but rather to the governorship itself. Some governorships are "strong" and some are "weak."

The meaning of this "strong-weak" classification can be stated rather simply. It refers to the amount of constitutional and statutory power that a particular governorship has, and amounts of power are measured according to several different standards. These are: (1) power to appoint and remove other state administrative officials as well as power over hiring and firing of lesser state employees; (2) the veto power over acts of the state legislature; and (3) control over expenditures of state money. By way of illustration, a "strong" governor would have the power to appoint most department heads and top administrative officials, and these officials would be responsible to him for the running of their departments. He would be able to veto acts of the legislature in whole or in part (the so-called "item veto") and such vetoes could be overridden only by two-thirds or more of the members of both houses, and appropriations granted by the legislature could be spent only with his approval.

A "weak" governor, by contrast, would have to share the state's executive responsibilities with a large number of other *elected* officials, who would run their departments as they see fit. His vetoes could be overridden by simple majorities in the legislature, and he would have little or nothing to say about how and when state money is expended.

Now let us see how Indiana's governors rate according to the "strong-weak" classification.

Recall, first, that Hoosier voters elect a number of other executive officers besides the Governor—the Lieutenant Governor, the Secretary of State, Treasurer, Auditor, Attorney General, and Superintendent of Public Instruction. None of these officers is required to answer

to the governor for his acts, and on those (usually rare) occasions when they are not all of the same political party, there may actually be a good deal of open hostility among them. But at the same time, the great bulk of Indiana's administrative officials *are* appointed by the governor and are legally responsible to him for the general operation of their departments. Thus, to cite just a few, the Departments of Revenue, Administration, Natural Resources, Public Welfare, and (biggest of all) Highway all must answer to the governor for the way they conduct their affairs. Their top officials are appointed by him and may be removed by him without reference to either the legislature or the courts. The importance of this situation in terms of gubernatorial power is highlighted by the fact that in a number of states all of the department heads we have mentioned are elected directly by the people and thus operate entirely outside the formal control of the governor.

A related point has to do with the many thousands of state employees in subordinate positions, from janitors and groundskeepers up to executive assistants. Out of a total of about 24,000 state employees*, close to half may be regarded as "governor's patronage"—that is, they owe their jobs either directly to him or to persons operating under his authority. (The other half either are civil service employees or work in state agencies not subject to the governor's control.) This number of patronage jobs is second highest in the nation (only Pennsylvania has more) and is a major source of power for Hoosier governors.

As for his relations with the legislature, an Indiana governor is handicapped by the lack of an "item veto" power; he must either accept or reject an entire Act instead of being able, as many governors can, to strike out particular sections which he finds undesirable (U. S. Presidents suffer from this same handicap). And his vetoes can be overridden by an absolute majority in each chamber—26 votes in the Senate, 51 in the House—the same number that was required to pass the bill in the first place. This appears to make the veto power ineffectual, but in fact, gubernatorial vetoes are not often overridden. Perhaps the major reason why they are not is party loyalty. Members of the governor's own party in the General Assembly are usually very reluctant to oppose him as openly and as dramatically as they

* This figure does not, of course, include teachers in either public schools or state universities, nor does it include county and local government employees.

must when voting to override a veto, and it is very rare indeed for a governor to face opposition party majorities in *both* houses of the legislature (since World War II only Governor Schricker, in 1951, and Governor Welsh, in 1963, have been confronted with this politically unhappy situation). The crucial factor, then, is not so much the particular constitutional arrangement as it is the nature of the party system, and in Indiana strong, cohesive parties add great weight to the governor's power in many aspects of his legislative relations, including the effectiveness of his veto.

The third criterion we suggested for measuring the "strength" of a governorship is the degree of control over state spending granted to the governor by Constitution or law. Since 1961, Indiana's governors have been able to exercise substantial control over the entire budgetary process. In contrast to earlier practice in which an agency of the General Assembly, the Budget Committee, not only drew up the proposed budget which was to be submitted to the Assembly each session but also controlled expenditures for all construction projects, revisions of pay scales, use of departmental contingency funds, and much else besides, all these functions now rest in the hands of a governor's appointee, the Budget Director.

It might be noted that Senator Nelson Grills once challenged the constitutionality of the old law because it allowed Legislative members to make what he considered executive branch policy decisions. This contention was sustained by the lower court and was on appeal to the state Supreme Court when the new law was enacted. The case was Gardner, Auditor v. Grills, 249 Ind. 29, 175 N. E. 2d 697 (1961). The Supreme Court refused to render an opinion in the matter holding that the question was now moot because of the 1961 budget law change.

In practice, therefore, Indiana's governor exercises as much control over the spending of state money as any governor in the country. Ultimate authority for taxes and spending still rests, of course, with the General Assembly which sets the broad outlines and much of the detail as well. But there can be little doubt that the governor is now the key official in the area of economic policy, largely as a result of the 1961 Act that transferred this authority from the old Budget Committee to the chief executive.

Can "balance-sheets" be run on the powers of the Indiana governorship to determine whether it should be classified as "strong" or "weak"? At this point, the answer can only be tentative, for

we have confined ourselves largely to constitutional and statutory considerations—which, as we indicated in our discussion of the effectiveness of the governor's veto power, tell only part of the story. If any one fact emerges from close study of government in Indiana (or the United States, or any other nation in the world) it is this . . . . political power can never be accurately measured on the basis of constitutional—legal arrangements alone. Indeed, they often conceal more than they reveal.

Let us look instead at the way a Hoosier governor actually conducts the business of his administration to see *how much he is likely to be able to get done of whatever it is he wishes to do.* That, after all, is the true test of any man's power in office, though we should have to admit that a governor who simply does not care to do very much can hardly be classified "strong" even though he succeeds in what little he tries. The point to remember here is that we are assessing the strength, not of a particular *man,* but of the *office* he holds—the powers inherent in the governorship of Indiana.

A. Control over Administration

Since, as we have seen, responsibility for state administration is divided between (a) the governor and his appointed department heads, and (b) five other constitutionally-established officers, none of whom is responsible to the governor in any legal way, it would seem to follow that his relations with his own appointees are likely to be very different from his relations with other elected officials. But this is a fine example of how appearances *can* be deceptive. For there are circumstances in which it is possible that an appointed department head may have more real independent power than, say, the Secretary of State.

Consider the following entirely hypothetical examples. In 1972 electoral fortunes favor the Republicans. A Republican governor is elected by a heavy majority and carries into office with him the full party slate. He appoints as Head of the Department of Correction a very highly regarded professional penologist who quickly wins the admiration and loyalty of his own large staff in the Department. About a year after taking office the governor has a policy disagreement with his Correction chief. He also has a policy disagreement with the (independently elected) Secretary of State. Which of these two "arguments" is he more likely to win?

A simple reading of the law books would indicate that the governor need only issue an order to bring the Correction chief into line, but is powerless to do more than argue with the Secretary of State. But this interpretation ignores several fundamental realities of administration and politics. In the case of the Correction Department dispute, a direct gubernatorial order to follow a policy which the Head strongly opposes may easily lead to the latter's resignation—and with him might well go several key subordinates and the general morale of the whole Department. Realistically, then, the governor has to face the possibility that he could get his way only at the price of virtually ruining the effectiveness of a large and important agency of government—a price that most governors would conclude is far too high to pay for winning a policy argument in which the other man is the acknowledged expert and very likely has strong newspaper and public support.

The Secretary of State, by contrast, is almost totally dependent on the governor in one crucial respect. He can be renominated at the 1974 Republican state convention only with the approval of the governor, who at this point in the political cycle is the absolute master of his party. Thus the Secretary of State can defy the governor's wishes only at the probable cost of his political future. For he cannot, like the Head of the Correction Department, resign with honor and move on to another state where expert penologists are in great demand. Instead, in order to pursue his career in politics, he has first to be renominated and re-elected in 1974 and then try to move up the ladder two years later. And this he simply cannot do without the blessing, or at least the benevolent neutrality, of the governor.

And whereas the cost to the governor of dismissing his Correction chief would be excessively high, no comparable cost is normally involved in "purging" an insubordinate political dependent—which is substantially how the Secretary of State would be viewed by the party rank-and-file. This is not to say that a party leader would take such drastic action needlessly or without *any* cost to his own position. The point, rather, is that the weapons the governor can bring to bear are significantly heavier and the costs to himself significantly less in "winning the argument" with the Secretary of State than with the Head of the Correction Department—constitutional appearances to the contrary notwithstanding.

The whole equation is altered radically, however, when you change the party factor. A Republican governor quarreling with a Democratic Secretary of State would have to use very different, and much less reliable, means to win a policy dispute. And if recent examples of divided party responsibility in the administrative branch are any guide, we should have to assume that the most likely outcome of such a dispute would be unproductive public bickering followed by stalemate. So here again we see that an understanding of the party system in Indiana is crucial to any real understanding of the way our total governmental system operates.

There are other, equally important lessons to be drawn from our hypothetical example of a governor's quarrel with one of his own appointees and with an independently elected official. One, already mentioned, is that constitutional and statutory lines of authority (as in the organizational chart) may reveal a good deal less than we suppose and in some circumstances, be downright misleading. Another is that certain departments of state government, especially those that have to be staffed with large numbers of professional experts, may develop preferences, commitments, professional loyalties, etc., quite independent of, and occasionally in opposition to, the wishes of the chief executive. When such conflicts develop, the resolution is far more likely to be in the nature of a compromise between the governor and his department head than a straight-out "victory" for either.

How much "control," then, can the governor of Indiana be said to exercise over administration? The answer is not nearly so clear-cut as we might have wished, but in the real world of government and politics, it rarely is. We should have to say, first, that the degree of control will vary from department to department depending on (a) the formal rules and limits set by the General Assembly, and the Federal Government and (b) the kind of work the department does. Secondly, the governor's *general* degree of control over *all* departments will depend on (c) his own personal interests, values and commitments; (d) his prestige and popularity both within government and among the general public; (e) his leadership ability; and (f) the balance of party power in all three branches of government. Let us look a bit more closely at each of these distinctions.

(1) With the five exceptions of constitutionally-created departments, all departments, agencies, and commissions of state government

are established by acts of the General Assembly, which also fixes their responsibilities and prescribes regulations which they must enforce. For example, it is the legislature and not the Department of Natural Resources that determines the cost of hunting and fishing licenses. And so, even though that Department must answer to the governor for the way it administers its duties, the governor has no legal authority either to change the license fees or to exempt certain people from having to buy them. How many such rules and regulations are prescribed varies from department to department, and, of course, the fewer there are the more leeway the governor (and his appointed department head) has in running its affairs.

(2) We have already seen how, in a highly professional unit like the Department of Correction, the governor is much more likely to compromise policy differences with his own appointee, the Commissioner, than to attempt to ram through his personal view over the Commissioner's objections. This is because a chief executive needs the confidence of his expert professional staffs quite as much as they need his, if the Department is to be able to operate in an orderly and effective manner.

But departments differ markedly in degree of professionalization. Those like Correction, Mental Health, Board of Health, and State Police are, and must be, staffed almost entirely by specialists in various fields. The Bureau of Motor Vehicles, although performing functions that are largely clerical in nature has a changing role of traffic safety—requiring the Bureau to employ individuals trained in particular needs. Still others—most notably Highway—employ large numbers of both specialists and non-specialists. It appears to be generally true that, other things being equal, the *less professionalism, the more control* a governor will have over policy decisions not already specified by the General Assembly or the Federal government.

(3) Each governor brings to his office a set of personal interests, values, and commitments. And since, in fact, there is simply not enough time in any man's schedule to permit close supervision of all the activities of so vast an enterprise as the government of Indiana, the amount of time the chief executive will devote to each activity will depend, to an important extent, on how much he personally *cares* about one as against another. Some activities, of course, require frequent and sustained attention from any governor—highways, for instance, or economic development—while others will involve no

more than his scanning of a year-end report—livestock sanitation, perhaps, or the licensing of barbers and beauticians.

(4) How effective a governor will be in causing his own policy views to prevail in an administration will inevitably depend on his prestige and popularity within government and without. A highly respected governor is much more likely to win compliance from subordinates doubtful about a particular policy than is a governor whose judgment and motivations are looked upon with considerable lack of confidence. On the other hand, even though a governor may be well regarded among those close to him, if his public popularity appears to be badly lagging, a subordinate is more likely to take the risk of defying his wishes by, in effect, appealing over the governor's head to the news media and general public.

(5) The quality we call "leadership ability" is exceptionally difficult to define. About all we can do is point to its effects when a particular leader has it. A governor, therefore, can be said to demonstrate leadership ability to the extent that he is able to win support for his policies *by means other than threats and coercion.* This last proviso is important, because a governor does, after all, hold a good deal of raw political power. But the exercise of force is hardly a measure of leadership ability. Even the most inept governor can win grudging support from an underling by threatening to take his job away. On the other hand, no particular *leadership* ability is displayed when a governor merely advocates what most people are in favor of anyway. To lead means to be in the forefront. And getting people to follow where they would not themselves have gone or to maintain a position they would otherwise have abandoned is thus a true sign of leadership ability.

(6) We have noted time and again throughout this study, the absolutely crucial role that political parties play in the operations of Hoosier (or any other) state government. So it should come as no surprise to learn that a governor's effectiveness as an administrator depends heavily on the balance of party forces in all three branches of government.

In the executive branch itself, a governor is obviously in a better position to maintain consistent influence throughout the administration if all other elected administrative officials are members of his own party. The contrary situation (as with Governor Handley in 1959 and 1960 and Governor Welsh during his entire four years,

1961-65), while not a crippling disability, is surely a marked handicap for the man whom the public holds generally responsible for *everything* that occurs during an administration.

An even more difficult situation arises when the General Assembly is controlled by a party other than the governor's. One reason is that the legislature can always (though within certain limits laid down by the Supreme Court) change the operating rules by which the governor's degree of control over administrative activities is determined. Another, more subtle reason, is that a governor's control over his own appointed department heads may sometimes depend on the room for maneuver that the appointees see themselves as having. A competent, but not wholly loyal department head is likely to be tempted, in a sense, to play off the legislature against the governor (on budgetary matters, for instance) when party rivalries impede full cooperation between the two. To be sure, the governor can always fall back on the last resort weapon of firing his department head. But for reasons we discussed earlier, that can sometimes appear to the governor to be administratively more costy than simply suffering the disloyalty in silence.

By contrast, when a governor has solid majorities in both houses of the General Assembly and a firm grip on the party machinery, all but the most reckless subordinate is likely to conclude that the situation offers an absolute minimum of maneuverability and will have to trim the dimensions of his opposition to the governor accordingly.

Finally, party balance in the state's Appellate and Supreme Courts may sometimes have an impact on a governor's control over administrative affairs. The most dramatic illustration of this fact occurred in 1941, when a Republican-dominated General Assembly enacted measures to strip Democratic Governor Schricker of much of his appointive power. The Supreme Court declared the acts unconstitutional by a four-to-one decision. It can, of course, be contended that the partisan nature of that decision was more apparent than real and that the justices decided as they did without any reference to their own party affiliations. It is certainly true that no one can *prove* that partisanship was the key to the decision, but it seems at least reasonable to suppose that, since we do in Indiana elect our state judges on a party ticket, *chances are* that Democratic judges will hold policy views generally in accord with those of a Democratic governor and so with a Republican set-up. When issues involving administrative (as well as other)

matters come before a court for decision, the *likelihood* is that individual judges may, within the area of discretion open to them, reach conclusions in harmony with the *general* policy views they hold as citizens and as partisanly-elected officials. The upshot is that in cases in which the governor's administrative powers are in question, he is far more likely to have those powers affirmed by the court which has a majority of members of his own party than in situations where the policy balance tilts in the opposite direction.

By way of summary, then, we can say that the constitutional and statutory tools for strong administrative leadership are quite generally available to a governor of Indiana who has (a) the will, (b) the ability, and (c) the majority party support necessary to use them to their fullest potential. Given these three requisites, he will find that his principal handicaps are (1) the number of independently elected officials with whom he has to share administrative responsibility, and (2) the Constitutional prohibition against succeeding himself for a second term. On balance, however, the power assets of his office seem clearly to outweigh the liabilities.

B. The Governor's Relations with the General Assembly

If a governor is to succeed in carrying out even a fraction of his program for the state, he will have to have very substantial support from the General Assembly. For even if new laws are not required (and they usually are), appropriations will be. And it is only the General Assembly that can pass laws, levy taxes, and appropriate money from the state treasury.

This is not to say that a governor is *totally* dependent upon the legislature for accomplishing his program. Given the general legal framework within which Indiana's governors operate, the chief executive has a certain amount of leeway in policy-making of a kind that in other states might require legislative action. One recent example of this was Governor Welsh's establishing of a Hoosier forerunner to the present Federal Job Corps Program. Some 100 unemployed high school dropouts were given the opportunity to spend 60 days in Harrison State Forest—where they received room, board, clothing, basic education in the three R's" and the guarantee of some kind of job when they finished—in exchange for their labor in helping to improve the physical facilities of the Forest. This entire program was set up by executive order and administered on a coopera-

tive basis by the Departments of Conservation, Correction, Public Instruction, and the Indiana Youth Council; financing came out of funds already appropriated to the agencies involved.

It is true that much the greatest part of any governor's program will have to have the General Assembly's approval. Yet the very fact that we talk about a "governor's program" indicates the importance of the chief executive's role in formulating policy for the state. It is expected that the governor will deliver at least two major addresses in the first days of the Assembly's biennial session—one on "the state of the State" in which he expresses his views on current problems and recommends a number of specific policies for the legislators' consideration, and a second message in which he discusses the state's financial condition and submits a formal, detailed budget for the next two years. In addition, he has the right at any time to send special messages embodying other proposals and can, of course, even call the legislature into special session when some matter of urgency arises requiring legislative action. (The two special sessions of 1965 are illustrative: in the first, Governor Branigin requested specific authorization for the state to offer a piece of land to the U. S. Atomic Energy Commission in hopes that Indiana might be chosen as the site of a huge new nuclear installation. The second was made necessary by a Federal court's striking down of the recently-enacted legislative reapportionment plan. In this instance, Governor Branigin made no specific recommendation but simply called upon the General Assembly to pass new reapportionment measures that would meet the court's declared standards.)

No matter what kind of proposal the governor wishes to make, however, it must be drawn up in the form of an ordinary bill and submitted by a member of the legislature in either house. The governor himself cannot submit bills on his own, and the only indication that a particular proposal comes from the chief executive is that he or the bill's sponsor says it does. Normally, a member of the governor's own party will act as sponsor, especially on proposals that were set forth in the party campaign platform. But there will always be a number of essentially non-partisan proposals for which the governor will try to get a legislative sponsor from each party (the civil rights acts of 1961 and 1963 are good examples of this).

"Administration bills" will also originate in large numbers in the various departments that come under the governor's jurisdiction, but

the governor will not often want to identify them as "his" because he must necessarily be stingy about the commitment of his personal prestige. Department heads will therefore line up their own sponsors in the General Assembly and attempt to win passage for their proposals in much the same way private interest groups do for theirs. Few, if any, of these departmental measures arouse *partisan* controversy, but many fail to pass simply because of lack of legislator interest.

Those bills to which the governor commits his own prestige are normally few but important. And once he has decided to push for their enactment, he can bring to bear upon members of both parties a considerable range of pressures, including frequent public statements, and private meetings with legislative leaders, interested lobbyists, and individual legislators. On occasion an aggressive governor has resorted to offers of rewards or threats of reprisals to individual members of the General Assembly whose votes promised to be crucial on particular roll calls. As we have already seen, the governor's influence on members of his own party in the General Assembly is very substantial (though not irresistible) and it is customary for all of them to line up in support of the man who is, after all, the unchallenged party leader and sole dispenser of major patronage. This means that when the governor's party has majorities in both houses of the legislature, "his" bills are overwhelmingly likely to pass. But the situation becomes a good deal more difficult when one or both houses are controlled by the opposition.

There will still, of course, be a few "governor's bills" that are non-partisan in character (even if highly controversial on other grounds. Again, the civil rights bills are illustrative, as is the "tax package" of 1963—which did not become an Administration measure until the closing days of the special session, and then split both parties just about down the middle). An example of an important, non-partisan, non-controversial proposal for which the governor was able to get sponsors from both parties was the 1961 act which abolished the old Budget Committee and established in its place the Budget Agency under the governor's jurisdiction.

Proposals, however, which come into being with even the faintest partisan coloration usually end by dividing the legislature along straight party lines. This is because the political stakes are so enormously high in the jam-packed 61-day session that constitutes the

only opportunity for the legislative members of the two parties to "make a record" for the next election. And the stakes are, in effect, doubled when the legislative majority is in partisan opposition to the governor, for no party wants to risk making an opposition governor look too good when to do so is to invite the public to elect another member of the governor's party to succeed him in the most powerful office in Indiana. Within, therefore, the rather hazy limits of propriety and "the public interest," an opposition majority in the General Assembly is almost certain to use its full powers to discredit the governor (politically, not personally) by making him appear an ineffective leader whose policy ideas are bad if not catastrophic.

In these circumstances the governor's only available strategy is to make a careful private distinction between the bills he wants to associate himself with "for the record" and those he really intends to fight for with the full arsenal of weapons at his command. This distinction is vital because the former he will *insist* upon presenting as partisan proposals, knowing that they will be defeated by the opposition majority and hoping to score political points by that very fact. But the latter he will want to put forward in the most non-partisan form he can devise in hopes of convincing the majority that no party interest could conceivably be advanced by rejecting them. Having then sufficiently disarmed the opposition so as to prevent them from voting as a bloc, he can use the variety of persuasive techniques he possesses to win as many individual votes as he needs to make up a *bipartisan* majority for that particular bill.

No strategy, of course, is foolproof. And the governor's perceptions of which proposals are partisan and which are not may be very different from those of the opposition. Thus every governor in the unhappy position of facing hostile majorities in the General Assembly finds himself the recipient of largely unexpected rebuffs and, occasionally, victories he had never dared hope for.

Closely related to the problem of the governor's sponsoring particular policy proposals is the statutory requirement that he submit a proposed budget each biennium for the General Assembly's consideration. It will be useful at this point to look briefly at the mechanics of budget-making in order to grasp more fully the governor's role in the legislative part of the process.

In simplest terms, a budget is a statement of anticipated revenues and proposed expenditures—the latter hopefully bearing some reason-

able relationship to the former. The first problem, then, is to determine how much revenue (or income) the government is going to have for the period in question. It is never easy to make such estimates, and in Indiana the problem is complicated by the fact that the budgetary period is two years rather than one—which means that revenue forecasts have to be made in, say, December, 1966, for a period extending from July 1, 1967 to June 30, 1969. (The state's "fiscal year" runs from July through June rather than January through December).

Now the basic determinant of revenue is the tax system—what kind of taxes and how high their rates. Assuming that these two factors are to remain unchanged during the period, economists can predict with considerable accuracy how much revenue will be produced by a 2% retail sales tax and a 2% adjusted gross income tax (the two main pillars of Indiana's present system)—*providing general economic conditions conform to expectations.* This is no small proviso. For while economists may feel modestly secure in predicting economic conditions six months or even a year in advance, anything beyond a year has to be considered little better than guesswork.

In the context of Indiana budget-making, this kind of uncertainty can be a problem of utmost seriousness. Those who do revenue forecasting for the state (members of the Commission on State Tax and Financing Policy) can be reasonably confident about predicted revenue for not more than the first six months of the two years during which the budget will be in effect. And if a general economic decline should occur beginning, say, in January 1967, the income of state government may well fall many millions of dollars short of authorized expenditures for the remaining 18 months of the biennium. This would require the governor and budget director to act on their own authority in cutting back expenditures wherever they could. In practical effect, they would be drawing up a whole new budget for the state without direct legislative approval, save only that they would be legally prohibited from *increasing* any departmental expenditure beyond what was authorized by the General Assembly.

Despite this difficulty, however, state budget-making necessarily proceeds on the basis of predicted tax yields for the forthcoming biennium. The Budget Agency meanwhile gathers detailed appropriations requests from every single agency of state government and, in consultation with agency spokesmen and the governor, proceeds to

squeeze and trim these requests with great diligence so as to bring the total package within the limits of anticipated revenue (with, hopefully, a modest surplus as insurance against unexpected revenue shortages).

It should be noted that in the very act of drawing up a proposed budget, the governor and his chief advisors are proposing *policies* as well. When, for example, the budget submitted to the General Assembly asks for a sharp increase in mental health appropriations, it is clear that the governor is urging a policy change in the direction of increased state activity in the care and treatment of mental illness. Similarly, a budget proposal to raise the percentage of state aid to local school units from, say, 30% of the total cost to 40%, represents a major policy commitment on the part of the governor to lowering local property taxes in favor of increased taxes at the state level.

The general point can be made that this is very much an executive budget in its inception; the governor must personally approve its every major feature. But preparing and submitting the budget is only a first step, for nothing in law or Constitution requires the General Assembly to accept a single one of the governor's recommendations as to either taxes or appropriations; the ultimate authority for both rests with the legislature.

Here again political party becomes a decisive factor in the fate of a governor's legislative proposals. With firm majorities in both houses, the chief executive's budget is likely to undergo a minimum of revision. With a divided or hostile legislature, the governor may see some of his most cherished programs drastically altered. But no matter what the partisan complexion of the General Assembly, the governor cannot escape identification with every major feature of the budget which he, after all, submits as his own and publicly justifies with an accompanying message (usually delivered in person).

In its legislative form, the budget is introduced as two separate bills—one for general appropriations "for the conduct of the state government", the other for appropriations "for the construction and repair of state properties." Custom dictates that these bills be introduced in the House of Representatives, where they are sent after "first reading" to the powerful Ways and Means Committee which has, in fact, already started the vast labor of holding hearings and examining in detail the individual agency requests which it knows to be coming. Committee work on the two budget bills is not completed

until well along in the session (in the relatively placid 1961 session, the House passed both and sent them to the Senate on Feb. 8, received them back with amendments Mar. 4, concurred in the amendments to one, dissented from the other, and finally completed its budget labors on Mar. 6—the last day of the session).

As for the revenue-raising part of the budget, it is assumed that the tax system will remain unchanged unless there is a specific request from the governor to change it. If new taxes are called for, a bill or bills to that effect (usually in the form of amendments to existing law) will be drawn up and *must* be introduced in the House of Representatives—a Constitutional provision which is today just about as harmless as it is meaningless. No direct request from the governor for new taxes is necessary, of course. Any member of the House can introduce tax legislation at will. But the tax structure of the state is both too delicate and too important to be subjected to the whims and fancies of individual members. Hence, serious moves for tax revision have always been instituted either by request of the governor or decision of the party leadership in the legislature. In fact, Indiana's tax structure has had a major overhaul only twice in this century—in 1933 with the institution of the gross income tax, and 1963 with the institution of the adjusted gross income tax on individuals and businesses and a retail sales tax on consumers.*

We can now turn to the governor's role in the budget-making process after his initial act of submitting a proposed budget to the General Assembly at the start of the session.

Party control, as we have seen, is likely to be the most significant determinant of the details of the proposed budget's fate. But even a politically hostile legislature can alter the governor's recommendations only within relatively narrow limits; the overall size of the budget depends far less on the will of any one man or group of men than on the objective needs of the state at a given moment in history. But bluntly, the major operations of state government are *not* going to be closed down no matter how loud the cries of pain from interest groups, newspaper editors, or individual taxpayers.

* There were other changes, too, but they are not pertinent to the present discussion. The revenue yields from the new taxes have exceeded expectations; in the fiscal year ending June 30, 1965, the sales tax brought in $145.4 millions and the income taxes on individuals and businesses produced $245.0 millions, for a total of $390.4 millions. By contrast, the old gross income tax was expected to have produced about $230.0 millions for the same period.

Indiana must continue to maintain a high-quality school system and keep its highway system growing and in good repair—and these two requirements alone accounted for nearly 70% of all state expenditures in the fiscal year, 1963-64!

Nor can the state close down its courts, its prisons, its hospitals, or its very modest activities in the field of conservation, natural resources, and public welfare. It can trim expenditures here and there and hold back on expansion of old programs or creation of new ones. But when the most rigorous economies in these areas have been achieved, at some real cost to activities considered vital by large numbers of citizens, the final budget figure is not likely to differ from the original proposal by more than 3 to 4%.

All this places the position of the governor in a very different light from what we might have expected on the basis of political charges and counter-charges that usually fill the air at budget-making time. No state budget within living memory has been either wildly profligate or disastrously restrictive and no governor has been either a careless spendthrift or a brutal tightwad in his budgetary proposals. When a governor has had to intervene in the legislature's consideration of the budget in order to try to salvage some favored project of his, the consequences of his success or failure can have made only a tiny difference in the dollar-amount of the final product. This point was well illustrated by Governor Welsh's 1963 attempt to induce the legislature to appropriate funds to start work on a public port in Indiana. This controversy over the port was widely-publicized and was properly regarded as one of the more important issues during that session of the General Assembly, but the fact is that the appropriation for which the governor was fighting amounted to only $25 million. If the legislature had voted to accept the governor's proposal and had passed this appropriation bill, it would have increased the biennial budget by a factor of less than two-tenths of one percent.

But while the final overall dimensions of any Indiana state budget are inevitably determined more by concrete needs and circumstances than by party battles, even quite modest alterations in the dollar-amounts appropriated for particular purposes may have a great and continuing impact on substantial segments of the population. Another vivid illustration from 1963 has to do with the efforts of a small but temporarily powerful group of senators who were determined to scrap the 1963-65 proposed budget in favor of re-enactment of the

1961-63 budget then in effect; state spending would have remained identical in every detail from one biennium to the next. The results of a successful effort of that sort (it was, of course, defeated) are interesting to contemplate. Informed observers of both parties agree that just a few of those results include: (1) a drastic cutback in the percent of state aid to local school districts, which, in turn, would involve increases in local property tax rates so enormous as to imperil literally thousands of small property holdings throughout the state; (2) a financial squeeze on state colleges and universities that would mean not only the turning away of several thousand qualified new students but also a loss of faculty in such numbers as to turn the clock back on higher education in Indiana by at least a decade; and (3) because of the ceiling that would necessarily have to be imposed on salaries of all state employees, skilled as well as unskilled, an irreparable loss of career personnel in many of the most vital areas of state government—which barely manages even now to pay salaries competitive with those offered in other states of Indiana's size and wealth.

We can conclude this discussion of the appropriations process by describing the governor's participation as being essentially marginal. Put another way, one governor's budget will not differ significantly in dollar-amount from what would have been the budget proposal of his opponent had he been successful in the preceding gubernatorial election. But relatively small dollar differences in emphasis on one program rather than another—say, $2 million shifted from conservation to mental health or from highways to conservation—can make an almost incalculable difference in the lives of thousands of people affected one way or another. And this holds true, too, for party control of the General Assembly. With only a few exceptions, the majority of members of both parties in any given session will agree on the overall size of the budget within 2 or 3% at the most. Their differences are likely to be more marked as to particular programs and the budgetary emphasis placed upon them.

A stronger case for the influence of governor and party can be made in regard to the other side of the budget question—*how* to raise the money needed to fulfill the government's obligations. As we have already seen, tax revision is quite a rare occurrence in Indiana—1933 and 1963 being the only years in this century that major overhauls

have taken place. But rate changes within an existing system occur more frequently, and any time state leaders generally agree on the need for higher revenues, the question of how to meet that need becomes economically and politically crucial. This was just as true during the thirty year reliance on the gross income tax as it is under the present system, for the decision always had to be made as to *which* of the many parts of the tax to increase by *how much*—a decision which affected every major interest group in the state as well as each individual taxpayer.

The amount of influence the governor will have on tax matters is dependent on (1) how much influence he *wants* to have, and (2) the party balance in the legislature. The latter point should be obvious by now. A governor with comfortable majorities in both houses is likely to get his way on tax as on other policy matters but politically hostile majorities in one or both houses will require negotiations of a most intense and delicate kind if there is not to be a stalemate.

As for the first point, a governor may fight vigorously for a particular kind of solution to the tax question, or he may simply announce the need for more revenue and leave it up to the legislature to decide how to raise it. The practice of most governors has been to adopt the former course on the grounds that whatever sort of tax increase came about would be blamed on the governor anyway by the general public. In 1963, however, Governor Welsh chose to take the latter course, stating that he would accept *any* tax program passed by the General Assembly so long as it met the revenue needs of the state. But midway through the regular session, he gave restrained public support to the Democratic party's program (a graduated net income tax, basically), and by the end of the special session found himself with little choice but to fight for the compromise tax package that was eventually adopted (by the narrowest of margins) and is now in effect.

No one can say with any assurance what the outcome of the 1963 battle would have been had Governor Welsh chosen to use his influence from the very beginning for a particular tax program, or had his 1960 electoral opponent, Crawford Parker, been the chief executive instead. What can hardly be questioned is that there would have been *some* upward tax revision in order to meet state needs that almost everyone agreed were pressing. But Democratic control of the General Assembly or Republican control of the governship

might have resulted in a tax system different from the one Indiana now uses.

The last area of executive-legislative relations to be considered is one we have already touched upon—the governor's veto power over legislation he believes to be undesirable. It will be recalled that this power is limited by the requirement that he veto an entire act rather than just those portions of which he disapproves. The significance of this limitation becomes especially marked in light of the foregoing discussion of the budget-making process. A governor may be quite pleased with the general shape of the two appropriations bills but intensely unhappy about a single item which he believes harmful to a certain area of state government activity. His only options are to accept the bill as is or veto the entire package. In reality, this latter is no option at all, because the consequences of doing so would almost certainly be the necessity of calling a special session and the creation of a great deal of bitterness and resentment on the part of legislative members of both parties. Thus the lack of an "item veto" among the governor's powers is, for better or worse, a substantial handicap to the greater exercise of executive leadership in legislative (especially budgetary) affairs.—(41 of the 50 state governors now possess the item veto for appropriations bills.)

A second limit on the effectiveness of an Indiana governor's veto power is the relative ease with which his veto can be overridden—absolute majorities in both houses. Indiana is one of only seven states that does not require an extraordinary majority to override (though North Carolina gives its governor no veto power whatsoever) and on the surface, at least, this would appear to be a severe handicap. But, as we saw earlier in this chapter, the constitutional appearances here are deceptive. So long as the governor has a party majority in at least one house, the likelihood of his veto being overridden is negligible and it is extremely rare in Indiana for a governor to face hostile majorities in both houses.

C. Control over Expenditures of State Money

An Indiana governor's control over state expenditures is exercised largely through the State Budget Agency consisting of three members—all of whom are appointed by the governor, but at least one of whom must be from the opposition party. The head of this agency is known as the Budget Director, and because of his duties,

he is, as we shall see, usually one of the most influential men in state government.

The key to understanding the realities of the situation is recognition that the budget director is *the governor's man.* Not only is he appointed by the governor, he is directly responsible to him and to him alone. And he holds office only so long os it pleases the governor to have him do so. But this is by no means saying that he is merely a tool or puppet of the governor. Quite the contrary! The chief executive must rely heavily upon the technical skill and good sense of his budget director to help keep the state's finances in good order, which is, after all, one of the major responsibilities we place upon our Governor. So while the budget director must retain the governor's confidence to stay in office, he performs the great bulk of his work according to his own best judgment.

In order to understand the full measure of the governor's authority in state financial matters, we must know what the Budget Agency is authorized to do, for *any* decision of the Agency or its director can be overruled by the governor, and it is for this reason that the latter may properly be said to hold the final power and be charged with the final responsibility.

First, as we have already seen, the Budget Agency is required to draw up a state budget every two years for submission to the governor, who is free to make whatever changes he wishes before formally transmitting it to the General Assembly.

Secondly, after a final budget has been enacted into law by the legislature, the Budget Agency must see that it is administered as the legislature approved—that is, that no unit of state government spend *more* than was granted to it and that the money be spent in the *way* it was intended. The former is obvious enough. An example of the latter would occur if a department tried to divert funds from one kind of activity, approved by the legislature, to another which had either been disapproved or which had never been submitted for consideration. In such a case, it would be the responsibility of the Budget Agency to refuse to allocate any funds for the latter activity even if doing so would not put that department's spending above the *total* amount approved by the legislature.

How does the Budget Agency maintain such strict supervision? Its principal mechanism is the system of quarterly allotments, whereby the funds for running each state agency are given to it in three-month

chunks (rather than, say, a whole year's allotment at once). Moreover, each unit has to submit in advance an allotment request detailing exactly how it intends to spend the money it is asking for. The Budget Agency can then check the request against the General Assembly's authorization both as to total amount and proposed use. And if either one is found to be out of line, the Budget Agency will modify it as necessary to bring it into conformance with the law.

The third major function of the Agency is to assist the governor in determining salary schedules for all state employees (save only for the few whose salaries are set by the General Assembly itself). In practice, this means determining whether or not raises will be given, to whom, and how much, for not since the days of the Great Depression have state employees' salaries actually been reduced. This power to raise salaries is, however, greatly limited by action of the previous legislature, for if the total salary figure in the budget for each governmental unit is not large enough to permit increases, there is nothing either the governor or the Budget Agency can do about it.

In summary, it is the responsibility of the Budget Agency, acting on behalf of the governor, to see to it that state funds are expended in accordance with the law—the law in this case being the biennial state budget as enacted by the General Assembly.

D. The Governor's Personal Staff

Indiana's governors have been rather less inclined than their colleagues in comparably sized states to employ a number of personal staff aides. Governor Handley (1957-1961) used only two full-time executive assistants, Governor Welsh (1961-1965) added two more, and Governor Branigan (1965-present) continues with four. Each governor parcels out duties and titles among his staff as he sees fit, but a fair summary of recent and present arrangements would appear to be as follows:

Executive Secretary. Responsible for the governor's schedule, political relations, and general management of the office.

Administrative Assistant. Responsible for coordinating executive department policies and seeing that the governor's own policies and directives are understood and followed throughout the administration.

Press Secretary. Handles the governor's relations with the news media and may do a substantial amount of speech-writing among other various duties.

Special Assistant. Responsible for specialized activities, such as processing extradition requests, deals with routine correspondence, and serves as a general troubleshooter wherever needed.

In addition to these four officials, all of whom have policy-making as well as administrative duties, the governor will always have a personal secretary, and during sessions of the General Assembly may also employ one or more legislative assistants. Even in its present expanded form, the governor's staff is almost certainly inadequate to meet the variety and weight of the demands that are placed upon it. Hence, it would not be surprising to find future governors asking the General Assembly for funds for a substantially increased staff. As one close student of American state government has recently written, "A governor's managerial effectiveness can rarely transcend the sufficiency and competency of his personal staff."[1]

[1] Mitau, G. Theodore, *State and Local Government,* New York, 1966, p. 151.

Chapter Five

STATE SERVICES AND ADMINISTRATION: A BRIEF SURVEY

The functions performed by the state government of Indiana have been modified very considerably in the years since the first Constitution was adopted. Even in 1816 state government rendered vital services to Indiana's citizens, and in the intervening years the scope of state government activity has broadened very substantially.

There are many tasks which men (and women) can perform satisfactorily as individuals. There are many other undertakings which can be effectively carried on through voluntary associations of private citizens. Government, however, differs in important ways from these voluntary associations and there are a number of tasks, which it is necessary or desirable to have carried out, for which government is the only available instrument. In the beginnings of Indiana, much of the law enforcement and protection of property could be left to individual citizens with their rifles. On occasion, these people could form a voluntary association, as a vigilante group, to pursue a fugitive. But private justice is dangerous and inefficient. Very early, government officials were providing law and order for Indiana residents.

As the characteristics of the state's economy and population changed with the years, there were increasing pressures not only for governmental units to undertake programs, such as fire protection, which had originally been left to voluntary groups, but also for the state government to engage in programs which had previously been left to units of local government. The counties were adequate instruments for law enforcement in the days of horse and wagons, for instance, but with the coming of the automobile, the law-breaker could move from one county to another so easily that there was irresistible pressure for the state to enter the law enforcement field. Thus, we have the Indiana State Police supplementing the sheriffs' departments of the counties.

In the pages which follow, we shall present a brief survey of the types of activities which are now carried on through the work of

Indiana's government. These programs will be grouped under the eight general headings of education, highways, public health, public safety and regulation, natural resources and recreation, corrections, welfare, and general government.

A. Education

Article 8, Section 1 of the Indiana Constitution declares, "Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all."

The responsibility for financing and administering public schools is shared by the state and its local units of government, but it is worth noting that the state has the "final say" in all educational matters and could, if our people wished, run the entire school system from a central administrative headquarters. This would, of course, be undesirable for a number of reasons, but it is certainly true that the state's share of administrative and financial responsibility has increased significantly in this century, especially since 1933.

Briefly summarized, the state's major administrative role is that of fixing standards for the public school system and then seeing to it that these standards are adhered to by the local units. Among the more important are the setting of qualifications for school teachers and school administrators, the prescribing of required courses of study, and the selecting of textbooks for use in the various courses. Enforcement of these standards is accomplished by periodic inspection of all schools and by requiring them to furnish detailed reports on every phase of school activity. As noted before this standard-setting and enforcement are the responsibility of the State Superintendent of Public Instruction and the Board of Education.

Financing the public schools is a continuing problem in Indiana (and in the rest of the nation as well). Prior to 1933, almost the entire cost of elementary and secondary education was met by local units of government, relying primarily on the property tax. But with the Great Depression at its worst, many communities found themselves simply unable to raise enough money to keep the schools

open, and in this emergency the state enacted a gross income tax—most of the proceeds of which were then allocated to local school units according to a school-aid formula devised by the General Assembly. Since that time, the amount of state aid to local schools has varied between 25 and 40 percent of the total cost—the present (1965-67) figure being about 35 percent, or $438.5 millions for the biennium. This figure, in turn, represents almost exactly one-fourth of the total state budget of $1.8 billion.

In the area of higher education, Indiana now supports four major universities, one two-year institution, and a vocational technical college—none of which comes under the administrative supervision of the Superintendent of Public Instruction or the Board of Education. Instead, each is governed by its own board of trustees and operates, for all practical purposes, independently of any external control other than budgetary (by the General Assembly).

Twelve percent of the total state budget, or $213.2 millions, now goes to support higher education in the state. Approximately 90,000 students were enrolled full-time or part-time at five of the six institutions in the fall of 1965 (the Indiana Vocational Technical College, founded in 1963, had not yet opened its doors to students).

B. Highways

Something over 11,000 miles of roads are currently included in the state highway system—the legal responsibility for which is exercised by a four-man State Highway Commission appointed by the governor, with actual day-to-day administrative responsibility vested in an executive director, also appointed by the governor.

Generally speaking, the duties of the Commission and its 5,500 full-time employees are the planning, construction, and maintenance of the state highway system. County, city, and township roads are not party of the system, but these receive some $72 millions annually in state aid. The cost of this combined operation is $539.3 millions for the 1965-67 biennium, of which 41% is provided by the Federal government, 59% by the state itself out of motor fuel and vehicle taxes. This means that state-level expenditures for highways are second only to those for education *and are more than for all other state activities combined.*

C. Public Health

The third most costly function of state government is public health—a category which includes two major administrative units, the State Board of Health and the Department of Mental Health. It seems probable that no other agencies of government touch the lives of so many people so frequently and importantly as do these, for they are engaged most literally in matters of life and death. Board of Health activities include, for instance, inspection and licensing of hospitals and nursing homes, enforcement of sanitary regulations for all public eating places and food-processing plants, keeping of vital statistics and communicable diseases records, and administration of eight state hospitals, homes and schools. The Department of Mental Health operates 11 state hospitals and training centers and carries on a very large number of exceptionally important activities through its four divisions of mental retardation, child mental health, alcoholism, and planning and evaluation.

Each agency is headed by a commissioner appointed by the governor in consultation with the nine-member Board of Health and the twenty-member Advisory Council for Mental Health, respectively—all of the members of which are likewise appointed by the governor. Commissioners have, however, traditionally been selected on a nonpartisan basis—as witnessed by the fact that at the time of this writing (1966) both incumbents had originally been appointed by Republican Governor Handley, reappointed by Democratic Governor Welsh, and reappointed again by Democratic Governor Branigin.

During the 1965-67 biennium, all public health activities will cost Indiana taxpayers a total of $112 millions, or a little over 7% of the state budget.

D. Public Welfare

Most activities traditionally labelled "welfare" are administered in Indiana by a Department of Public Welfare, which operates under the supervision of a bipartisan five-member Board and an official whose title is Administrator—all appointed by the governor. The Department renders assistance of various kinds to the aged, the blind, the disabled, dependent children, and many other types of needy citizens. Funds in the amount of $85 millions were appropriated for these purposes by the 1965 General Assembly, but more than 63%

of that sum will have been provided by the Federal government by the end of the biennium.

An important related activity is carried on by the Employment Security Division, established in the late 'Thirties to administer Indiana's responsibilities under the newly-enacted unemployment compensation and social security programs of the Federal government. Headed by a Director and a five-member Board, the Division operates job placement offices throughout the state, collects a special unemployment-fund tax from employers of four or more persons, and distributes benefits to unemployed workers at a maximum rate of $43 per week for not more than 26 weeks in any one year. Since the latter are paid out of a special trust fund financed by employers' contributions and all administrative expenses of the Division are paid by the U. S. Social Security Administration, the costs of this entire program are not generally regarded as a charge on the state treasury.

E. Natural Resources and Recreation

Indiana has long been justly proud of the number and beauty of its state parks and forests. But in the post-World War II period, pride became something like complacency, and substantially less money than necessary was invested for maintaining and improving the state's recreational facilities. As a result, neighboring states began to exert a noticeably greater attraction on tourists, Hoosiers included, as places for camping expeditions and family outings.

That trend now appears to be in the process of being reversed. Recent legislatures have appropriated the necessary funds for expanding recreational facilities in general and improving existing facilities where needed. Principally involved in this effort is the Department of Natural Resources, which exercises jurisdiction not only over parks and forests but over all water resources and historical landmarks as well.

The Department is headed by a Director, appointed by the governor, and a twelve-member Natural Resources Commission. In addition to operating recreational facilities, the Department carries on such important activities as soil and water conservation, flood control, geological surveys, and wildlife protection. Since most of its work is of a highly technical nature, the staff is composed largely of professional persons and career employees chosen on a nonpartisan or on a bipartisan merit system basis.

Other agencies included in the general budget category of natural resources and recreation are the Livestock Sanitary Board, the State Fair Board, the State Egg Board, State Port Commission, War Memorials Commission, and many others. But the appropriations for 1965-67 for this entire category amount to only a little over $56 millions—almost half of which is earmarked for construction of a public Port of Indiana.

F. Penal System

Though most counties and cities of Indiana maintain local jails, any lawbreaker sentenced to 30 days or more will be sent to one of the state's 11 prisons, reformatories, or work camps depending on the nature of the offense and the age or sex of the offender. These correctional institutions are operated under the jurisdiction of the Department of Correction headed by a professionally qualified Commissioner appointed by the governor. Each institution is, in turn, run by a warden or superintendent, also appointed by the governor, but subject to the administrative supervision of the Department. For the carrying out of its various responsibilities, the Department will require some $27 millions, or two percent of the total state budget, during the 1965-67 biennium.

G. Public Safety and Regulation

Less than two percent of the state budget is customarily allocated to a group of agencies whose functions touch the lives of every Hoosier in direct and intimate fashion. Included in this category are the Bureau of Motor Vehicles, State Police, State Fire Marshal, Alcoholic Beverage Commission, Civil Rights Commission, Department of Labor, Insurance Department, Public Service Commission, Office of Traffic Safety, Department of Civil Defense, Aeronautics Commission, Department of Financial Institutions, and many others—all of which serve in a variety of ways to enforce and administer state laws for the protection of our citizens. A detailed account of the work of these agencies would be beyond the scope of this pamphlet; we need only note that all operate, in Indiana as elsewhere, under what is known as the "police power" of the state, which is usually defined as the power to regulate or restrict the activities of persons and businesses for the overall well-being and benefit of the community.

H. General Government

One final category of state administration to be considered here includes those agencies that are primarily of service to government itself rather than directly to the people. They are known as "staff" agencies. Among the most prominent of these are the State Board of Accounts, which is responsible for examining or auditing the records and accounts of *all* agencies or units of government in Indiana which handle public funds, the State Board of Tax Commissioners, which generally supervises the property tax system and reviews the budgets of county, city, and township governments, and the Department of Administration, charged with carrying out a whole host of such "housekeeping" activities as supply purchasing, data processing, personnel administration, building maintenance, and operation of the state motor pool.

The last, and doubtless most visible to the public, is the Department of Revenue—Indiana's central tax collector. Among the many different taxes it is responsible for collecting are the gross income, adjusted gross income, retail sales, intangibles, inheritance, motor fuel, and cigarette. The Department is nominally headed by the Revenue Board, consisting of the governor, Auditor, and Treasurer of State, but is effectively administered by a Commissioner of Revenue appointed by the governor.

This concludes our survey of the administrative units of Indiana state government. As we remarked in the Preface, it has not been our intention to provide our readers with an exhaustive, fact-filled compendium of all state activities but rather to indicate something of the magnitude, breadth, and variety of the functions which Indiana's government must perform in pursuance of its Constitutional mandate to ensure "that justice be established, public order maintained, and liberty perpetuated. . . ."

Chapter Six

THE COURTS

No unit of republican government can work satisfactorily without an efficient court system. The laws passed by the legislature and administered by the executive must be enforced in individual cases.

A large proportion of the job of governing can be carried on without reliance on law suits. Service programs based on the expenditure of funds need not use the courts when things go smoothly, and even regulatory programs which are understood and accepted by the people affected can operate without using the courts more than as an infrequent last resort. In every aspect of the government's work, however, the courts must be available to resolve controversies and apply the law in those circumstances where agreement cannot be reached through other processes. This activity of the courts sometimes involves controversies between the state government and citizens who either are refusing to comply voluntarily with requirements the government believes are imposed on them by law or are charged with having done something which was prohibited by the law. Other cases in the courts involve controversies among two or more private citizens as to what private rights are established by the laws and may have been violated.

The particularly sensitive role of the courts stems from the fact that government of the kind we have in Indiana involves a balance between majority rule and minority rights. The system of having a popularly-elected legislature and chief executive, though it may not work perfectly, tends to insure general conformity with the principle of majority rule. Although the legislature and executive normally exercise their powers with genuine awareness of the fact that minorities do have rights which must be respected, the fact is that these policy-making and implementing bodies are essentially instruments of the majority. It is inherent in the nature of our system that the courts must serve as the means of protecting those minority rights which must be balanced against majority rule if our governmental system is to operate properly.

Every law passed by the legislature and virtually all executive orders of the governor must, by their nature, be phrased in general

terms. Before affected citizens can be certain exactly what behavior is prohibited or required by a new legal provision, it is frequently necessary that the courts apply the law to one or more cases, each of which will tend to reduce the uncertainties of the provision. By the deciding of these cases, each of which tends to serve as a precedent for similar cases arising in the future, the courts make valuable contributions to the citizens' ability to know what is and is not included in the legal requirements of the state. It is also true, particularly in the case of laws drafted in relatively general terms, that as the courts proceed to fill in the gaps with their precedent-setting decisions, they have an opportunity to play a significant role in the molding of state policy.

The usual work of the courts involves a comparison of the provisions of a law with the facts of a case. In addition to this normal judicial activity, the courts of Indiana, like those of the other American units of government, are occasionally called upon to decide whether a provision of law may be invalid because it attempts to go beyond the limits of authority granted to a lawmaking body by the terms of a body of higher law. This comparison of lower with higher law, which is known as *judicial review,* is exercised most dramatically at the state level when a court considers whether a statute passed by the Legislature may be invalid because it goes beyond the limits of discretion granted to the General Assembly by the Constitution. Judicial review is also involved whenever a court is called upon to determine whether an administrative regulation or executive order goes beyond the limits of discretion granted to the order-issuing authority by statute or Constitutional provision. A final area in which judicial review may come into play in the state courts involves questions as to whether ordinances or orders of local government units may be invalid because they go beyond the limits set by relevant provisions of state law.

Both in the processes of determining facts and measuring these facts against relevant laws, which is the usual task of the courts, and also in considering the compatibility of lesser laws with provisions of higher law, which is judicial review, the Courts of Indiana are carrying out tasks which much be done well if the governing of the state is to be carried on effectively. As the state's population has grown and its economic and social structure has become more complex,

the demands on the state's court system have multiplied. New courts have been established from time to time and by now the judicial machinery of Indiana is sufficiently complex that most citizens make no effort to understand its structure in more than general terms.

Article VII, Section I of the Indiana Constitution provides, "The judicial power of the State shall be vested in a Supreme Court, Circuit Courts, and such other courts as the General Assembly may establish." The Supreme Court has been established in compliance with the Constitutional requirement and it serves as the top of the state's judicial pyramid—the court of last resort on matters of Indiana law. The Constitution says that the Supreme Court is to have from three to five members and the Legislature has specified five. The state has been divided into five Supreme Court districts with one justice a resident of each district, but each justice is elected by the voters of the state at large. The term is for six years.

The Appellate Court, which is not specifically called for by the Constitution, was established by the General Assembly in 1891 as a means of dealing with the increased volume of litigation in the state, particularly that which had been generated by claims for workman's compensation awards. The Appellate Court was increased in size from six to eight justices by action of the General Assembly in 1959. Four justices represent and must reside in the First District, which consists of the southern half of the state and four in the Second District, which includes the counties in the north, but all are elected by voters in the state at large. They serve four year terms, which is the maximum the Legislature may establish for any office which does not have a longer term specified in the Constitution. Two justices from each District are elected at each biennial election. They are required to be lawyers in good standing, at least thirty years old and residents of the state for at least five years. At each term of the court, the eight justices select a Chief Justice who presides over the entire Court as well as his division and the other division selects its own presiding justice. The practice is for the judges to serve in rotation in these positions.

The "circuit courts," which are referred to by the Constitution, were conceived of as serving as the courts of original jurisdiction for the people of the state. At present there are eight two-county circuits each served by a single court, but in the other 76 counties the volume of legal business has reached a point which induced the Legislature

to give the individual county its own Circuit Court. Since no Circuit Court may have more than one judge, the larger counties have needed additional judicial services and, as a result, the Legislature has established additional courts as the needs became evident. At present there are fifteen counties where the Circuit Court is supplemented by a Superior Court which serves approximately the same function, and in the five largest counties there are even more. Marion County has five Superior courts and also criminal, juvenile and probate courts which handle special types of cases. At the bottom of the judicial pyramid in Indiana are the various local courts—the jurisdiction of which is limited to relatively minor cases. These include the city and town courts which have been established by various municipalities and the courts of the justices of the peace, of which each township in the state is entitled to have at least one. These local courts handle a vast number of cases, but the bulk of their business is made up of traffic violation charges and other relatively minor matters. There are problems in this area, particularly in the case of the Justice of the Peace courts, and the General Assembly will undoubtedly be called upon to take action in this field within the next few years. The problems, however, appear more at the level of local than of state government and will therefore be treated as beyond the scope of this volume.

The work of courts in Indiana, like those elsewhere, consists of the resolution of cases which involve controversies either between citizens or between the government on the one hand and one or more citizens on the other. Normally these cases begin either in a local court, if the matter is clearly minor, or at the level of the circuit (or superior) court. Procedures in the city courts or before justices of the peace are straightforward and these courts normally deal with cases before them promptly. If the case is a matter for a circuit court, however, procedures take longer and there is likely to be delay of a good many months before the case comes to trial. This is true even if both sides are anxious to have the matter resolved, and if one side wants to delay, it can gain even more time by means of a variety of devices such as a request that the trial be transferred to another county. If the facts of a case are in dispute, this court of original jurisdiction determines (sometimes with the use of a jury) where truth seems to lie and whether the charges have been proved. It then applies the relevant provisions of law to the facts of the case and renders a verdict.

The determination of facts in the first trial is not normally subject to further challenge, but if one side is unhappy with the way the law has been applied to those facts it may appeal the case to a higher court.

No cases, whatever, originate in the Appellate Court and although there are some special types of cases which may originate in the Supreme Court, there are seldom more than ten of these in the course of a year. It is essentially correct, therefore, to regard both the Supreme and Appellate courts as performing the function of giving a second chance to parties who are unhappy about the way state law was applied to their case when it was decided the first time. Only a minor fraction of the parties losing cases in circuit court ever win reversals on appeal, but the appellate procedure provides a valuable check against the possibility of a miscarriage of justice.

The Supreme and Appellate courts both have their courtrooms along with offices for the justices and a law library, in the State House, together with the legislative chambers and the offices of the Governor and the other elected officials of the executive branch. The five Supreme Court justices normally hear trials as a group in the Supreme Court courtroom. On some types of cases, the eight justices of the Appellate Court also meet together, but the normal procedure is for the two teams of four justices which represent the two circuits to alternate in use of the Appellate Court courtroom. Neither court normally meets anywhere in the state except Indianapolis. Both courts meet for two terms each year—one beginning in November and running through the winter and another starting in late May.

Candidates for places on the Supreme and Appellate courts are selected in essentially the same way as are candidates for other statewide elective offices. Anyone desiring to be considered as a candidate for the office must place his name before the state convention of his party, which involves paying a substantial "filing fee," and if there is competition for the nomination and he is a serious candidate, he must campaign among the delegates prior to the convention. If he is nominated, his name will appear on the general election ballot as his party's candidate along with those of the party's nominees for the other offices which are at stake in the election. He is expected to participate in the general election campaign in essentially the same way as the candidates for other office, and since his election or defeat

will depend more on the outcome of his party's general campaign than on his individual qualities or record, there is little reason for him to resist these calls to cooperate in campaigning with other candidates.

Although the idea of judicial service is attractive to many attorneys, the fact is that service on Indiana's Supreme and Appellate courts is not sought after by more than a small fraction of the state's most able lawyers. Only a minor part of the problem stems from the fact that the justices make less income than do many successful lawyers in private practice. Members of both courts receive annual salaries of $22,500 plus $2,500 for expenses, the services of a law clerk and the use of an automobile, which would be enough compensation to attract many able lawyers with judicial interests if the nature of the job were different. The fact is, however, that the idea of spending time and money campaigning first for nomination and then for election is unattractive to most attorneys who already have successful private practices. And this is particularly true when the election is for a term of only four or six years, at the end of which time it will be necessary to go through the same campaigning process. A justice may well be defeated for re-election, regardless of how conscientiously he may have done his job, if the party of which he is a member happens to run behind in that election year.

Circuit court judges are nominated in primary elections at the county level and selected on partisan ballots at the general election. In some instances, these judges, who are called upon to make a number of appointments and make other politically significant decisions, are major factors in their county's political organization. In other cases, however, they develop respect and popularity among voters on essentially personal rather than partisan lines and are able to seek re-election more as individuals than as members of their party. A Circuit Court judge who has not alienated the residents of his county has a reasonable expectation of being able to win re-election to repeated terms regardless of what happens to his party's other candidates, and this insulation from the winds of changing partisan fortunes contributes to the attractiveness of the position.

For many years, there have been criticisms of the organization and procedures of the Indiana court system. The changes which have been made, such as the increase in size of the Appellate Court, have

fallen far short of satisfying the critics of the system, and in response to the mounting pressures for change, the 1965 General Assembly established a Julicial Study Commission. This body, which differs from an earlier Judicial Council largely in the fact that its membership includes no persons who are presently serving as judges, is charged with the duty of proposing changes in the structure and operation of Indiana's court system—which would increase its efficiency as the dispenser of justice in the state. There are a number of problems with which this Study Commission will be concerned and on which it may make recommendations. These include—the length of time required to carry a case through the state's courts to a final settlement, the costs of conducting litigation which stem from such potentially dispensable features as the requirement that all briefs be printed rather than prepared in some less expensive fashion, and the methods of selecting the state's justices, which are criticized as adding unhealthy partisanship to the judicial process and rendering positions on the state's courts less attractive than they could and should be.

It seems highly probable that the court system of Indiana will be revised substantially in the near future and that the efficiency of the state's judicial branch will be improved as a result of the changes.

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1 Mitau, G. Theodore, *State and Local Government: Politics and Processes,* p. 151 (New York, 1966.)

2 Allen, David J., *New Governor in Indiana: The Challenges of Executive Power,* Indiana University Institute of Public Instruction, Bloomington, 1965, is an excellent study by an assistant to Governor Branigin, who also served on the staff of Governor Welsh.


SEAL OF THE STATE OF INDIANA
1816